

REPORT
OF THE
Attorney General
OF THE
State of Florida

From January 1, 1921, to December 31, 1922

RIVERS BUFORD
Attorney General

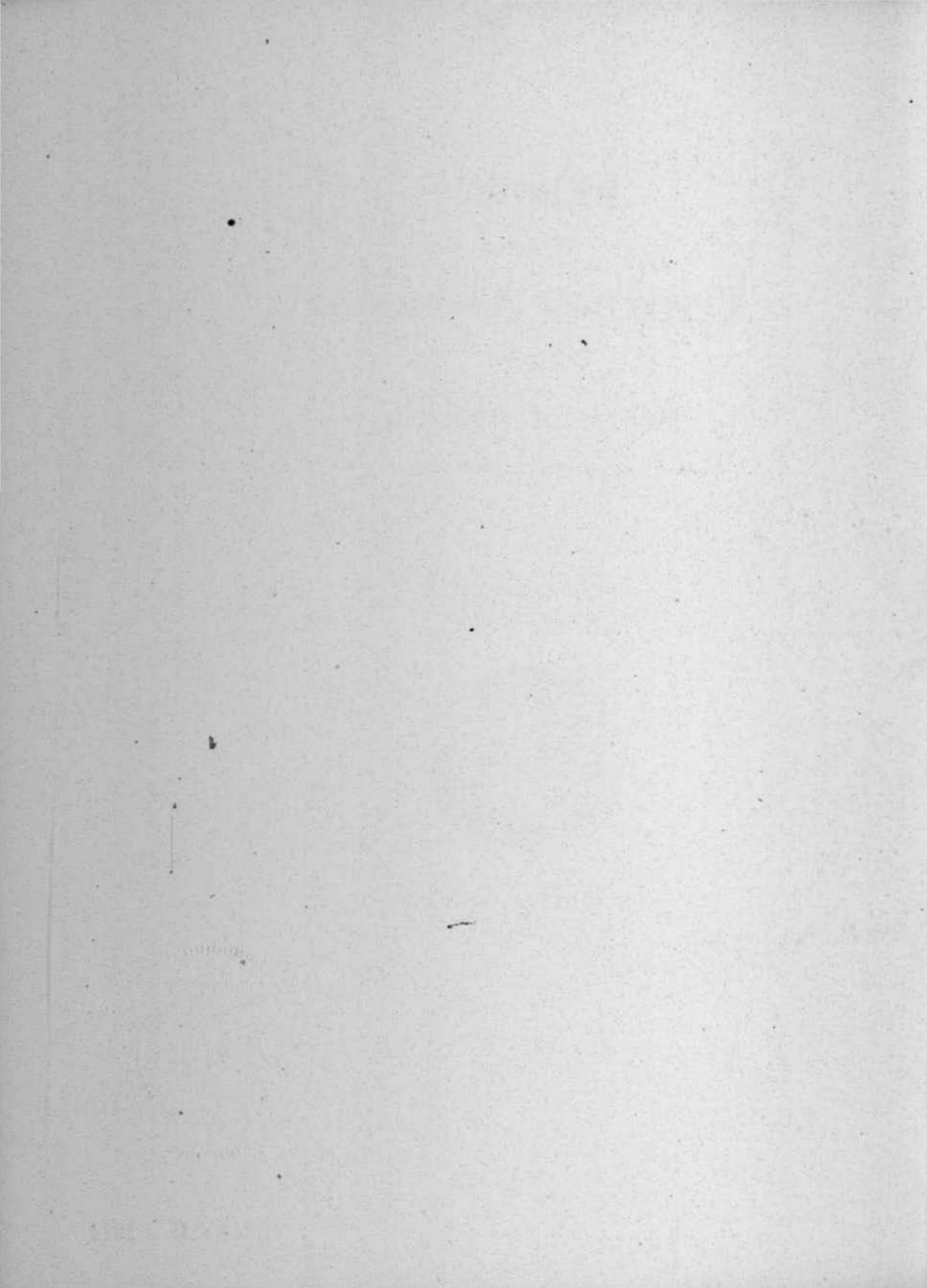


TALLAHASSEE, FLORIDA
1923

T. J. APPELVARD, PRINTER, TALLAHASSEE, FLORIDA



MAY 6 1924



LIST OF THOSE WHO HAVE HELD THE OFFICE OF ATTORNEY GENERAL OF FLORIDA

JOSEPHUS BRANCH	1845-1846
AUGUSTUS E. MAXWELL.....	1846-1848
JAMES T. ARCHER.....	1848-1848
DAVID P. HOGUE.....	1848-1853
MARION D. PAPY.....	1853-1860
JOHN B. GALBRAITH	1860-1868
JAS. D. WESTCOTT, JR.....	1868-186.
A. R. MEEK.....	186.-18—
SHERMAN CONANT	18—1871
J. B. C. DREW.....	1871-1872
H. BISBEE, JR.....	1872-1872
J. B. C. EUNNONS.....	1872-1873
WILLIAM A. COCKE	1873-1877
GEORGE P. RAINEY	1877-1885
C. M. COOPER.....	1885-1889
WILLIAM B. LAMAR.....	1889-1901
JAMES B. WHITFIELD	1901-1904
W. H. ELLIS.....	1904-1909
PARK TRAMMELL	1909-1913
THOMAS F. WEST.....	1913-1917
VAN C. SWEARINGEN.....	1917-1920
RIVERS BUFORD	1921-1922

2-1811

STATE LAW DEPARTMENT

RIVERS BUFORD.....Attorney General
J. B. GAINES.....Assistant Attorney General
MARVIN C. McINTOSH.....Assistant Attorney General
MISS ALLIE YAWN.....Law Clerk
MRS. BERTA W. BOHLER.....Stenographer

REPORT OF ATTORNEY GENERAL

STATE OF FLORIDA

ATTORNEY GENERAL'S OFFICE

Tallahassee, December 31, 1922.

HONORABLE CARY A. HARDEE,
Governor of Florida.

SIR:

In obedience to the constitutional mandate directing each officer of the Executive Department to make full reports of his official acts, of the receipts and expenditures of his office and of the requirements of the same, to the Governor at regular periods, or whenever the Governor shall require it, and in compliance with long established custom by which such reports are made to cover the two calendar years immediately preceding each regular session of the legislature, I have the honor to submit herewith the report of this office covering the period from January 1, 1921, to December 31, 1922.

GENERAL SCOPE OF DUTIES.

The constitutional duties of the Attorney General are prescribed by Section 22 of Article IV of the Constitution, as follows:

"The Attorney General shall be the legal adviser of the Governor, and of each of the officers of the executive department, and shall perform such other legal duties as may be prescribed by law. He shall be reporter for the Supreme Court."

The duties generally prescribed by statute are found in Section 89 of the General Statutes, as follows:

"The Attorney General shall reside at the seat of government, and shall keep his office in a room in the Capitol; he shall perform the duties prescribed by the Constitution of this State, and also perform such other duties appropriate to his office, as may from time to time be required of him by law, or by resolution of the Legislature; he shall, on the written requisition of the Governor, Secretary of State, Treasurer, or Comptroller, give his official opinion and legal advice in writing on any matter touching their official duties; he shall appear in and attend to in behalf of the State, all suits or prosecutions, civil or criminal, or in equity, in which the State may be a party, or in any wise interested, in the Supreme Court of this State; he shall appear in and attend to such suits or prosecutions in any other of the courts of this State, or in any courts of any other State, or of the United States; he shall have and perform all powers and duties incident or usual to such office, and he shall make and keep in his office a record of all his official acts and proceedings, containing copies of all his official opinions, reports and correspondence, and also keep and preserve in his office all official letters and communications to him, and cause a registry and index thereof to be made and kept, all of which official papers and records shall be subject to the inspection of the Governor of the State, and to the disposition of the Legislature by act or resolution thereof."

The Attorney General is also required by numerous statutes to perform other duties, and he is required by common law to exercise certain powers and perform other duties of great public importance.

SERVICE ON BOARDS.

A great deal of the very important business of the State is performed and handled by Boards and Commissions, created by the constitution and by statutes, which con-

sumes a considerable portion of the time of the State Officials; among these Boards and Commissions are the following, of all of which the Attorney General is a member:

BOARD OF COMMISSIONERS OF STATE INSTITUTIONS.

The membership of this Board consists of the Governor and his entire cabinet, which includes the Attorney General, State Treasurer, Secretary of State, Superintendent of Public Instruction, and the Commissioner of Agriculture. This Board has the management and control of all the State Institutions, which includes the Industrial School for Boys, the Industrial School for Girls, and the State Hospital, the State Prison Farm, and all State convicts. Necessarily the control and supervision of these institutions places upon this Board innumerable important duties, and the Attorney General being the legal adviser of this Board makes it necessary for him to not only act as a member of the Board but also to do all the legal work in connection therewith.

STATE BOARD OF EDUCATION.

The membership of this Board consists of the Governor, Secretary of State, Attorney General, State Treasurer, and State Superintendent of Public Instruction. This Board is charged with the duty of taking charge of and handling all the lands held by the State for educational purposes; to direct and manage and provide for the safe keeping of all the educational funds of the State; and also many other duties in connection with the general educational system. The Attorney General is the legal adviser of this Board as well as a member thereof.

STATE VOCATIONAL EDUCATIONAL BOARD.

Under the provisions of Chapter 7376, Acts of 1917, the Legislature accepted the provisions of the Act of Congress approved February 23, 1917, entitled "An Act to Provide for the Promotion of Vocational Education; to Provide for the Co-operation with the State in the Promotion of such Education or Agriculture and the Trades and Industries; to Provide for Co-operation with the States in the Preparation of Teachers of Vocational Subjects; and to Appropriate Money and Regulate its Expenditures." Under the provisions of this law the State receives from the United States about Eighteen Thousand Dollars annually to aid in carrying on this work. The State Board of Education was designated as the State Vocational Educational Board, and upon it was placed the duty of designating the schools at which would be taught vocational education in agriculture and the trades and industries, also the carrying out of the provisions of this law. The work of this Board has consumed considerable time.

STATE BOARD OF PARDONS.

This Board is composed of the Governor, Secretary of State, Attorney General, Comptroller and Commissioner of Agriculture. Under the Constitution this Board may remit fines and forfeitures, commute punishment, grant pardons in all cases except treason and impeachment. With a prison population of some 1,400 there are many among them who feel that the powers of this Board should be exercised in their behalf. Consequently a large number of applications for pardon are made to this Board, and as each case is carefully considered much time is consumed in these investigations.

TRUSTEES OF THE INTERNAL IMPROVEMENT FUND AND STATE BOARD OF DRAINAGE COMMISSIONERS.

These two Boards are composed of the same officials, and consist of the Governor, Attorney General, Comptroller, State Treasurer and Commissioner of Agriculture. The Trustees of the Internal Improvement Fund are vested with the title to and have the exclusive management and control of all lands belonging to the State, which were acquired by Acts of Congress of March 3, 1845, and September 28, 1850, which at this time amounts to approximately one million acres. Upon the Board of Drainage Commissioners is laid the duty of establishing a system of canals, drains, levees, dikes and reservoirs to drain and reclaim the swamp and overflowed lands within the drainage districts. Much time is consumed by the Attorney General and other members of the Boards in looking after matters concerning both of these Boards.

STATE CANVASSING BOARD.

This Board is required to canvass the returns of all general elections for State officers. Its membership consists of the Secretary of State, Comptroller and Attorney General.

BOARD OF TAX EQUALIZERS.

This Board was created by the Legislature of 1921, and is composed of the Governor, Attorney General, and State Treasurer. It is the duty of the Board to hear appeals presented by boards of county commissioners from orders issued by the State Tax Equalizer to the County Assessors of Taxes.

FOREIGN INVESTMENT BOARD.

This Board is composed of the Comptroller, who is Chairman, and the Attorney General. It is commonly called the "Blue Sky Board." Applications for permits to sell stock in domestic and foreign corporations are made to this Board. Under the present law the power and authority vested in the Board is extremely limited and entirely inadequate to protect the general public. The Comptroller and the Attorney General prepared a bill and had the same introduced in the Legislature of 1921, the purpose of which was to broaden the powers of the Board and thereby in some degree protect the public from impositions practiced by vendors of worthless stocks and securities. The bill however did not pass into law. It is to be hoped that the Legislature of 1923 will amend the present law so that the Board can not be forced to grant a permit for the sale of stocks and other securities in this State unless it shall be made to appear to the Board that such stocks or securities constitute reasonably safe investments.

BOARD OF APPRAISERS OF SECURITIES.

This Board is composed of the State Treasurer, the Comptroller and the Attorney General, and it is the duty of the Board to investigate and pass upon the sufficiency of all securities offered for deposit in the office of the State Treasurer, and in this connection it is the duty of the Attorney General to pass upon the validity of the liens created by such securities and to advise the Board whether or not the securities are valid and binding obligations.

BOARD OF RAILROAD PROPERTY ASSESSORS.

This Board is composed of the Comptroller, who is Chairman, the Attorney General and the State Treasurer. The name indicates the scope of the duties of this Board.

STATE LIVE STOCK SANITARY BOARD.

Chapter 8508, Acts of 1921, amended Section 2101, Revised General Statutes of Florida, and constituted the Governor and the Administrative Officers of the Executive Departments of the State the "State Live Stock Sanitary Board" with the Governor as President. It is the duty of this Board to promulgate rules and regulations and to enforce the statutory law for the protection of live stock in the State of Florida. The Attorney General is a member of this Board and its legal advisor.

OTHER BOARDS.

In addition to the duties laid upon the Attorney General, as member of the above boards, he is required to act with the Commissioner of Agriculture in passing upon questions arising under the Provisions of the "Pure Food and Drugs Act."

OFFICIAL OPINIONS.

During the period covered by this report I have, as required by the Constitution and statutes of this State, from time to time, as requested by the administrative officers of the Executive Department of the State government, advised them and prepared written opinions for them upon various subjects touching their official duties and powers. Copies of all these opinions are preserved in this office, and a number of them are incorporated in this report for the convenient use of such officers and others interested in the subjects covered by them.

In addition to these official opinions, although not expressly required by law to do so, but in order to assist in a proper interpretation and application of the statutes pertaining to their powers and duties, I have, when requested, prepared written opinions for other State of-

ficers, State boards and commissions, including the State Auditor, Hotel Commission, State Labor Inspector, State Board of Control and State Board of Health. Some of these opinions are also incorporated in this report.

In addition to these written opinions, the Attorney General is frequently called into consultation by other officers for legal advice relative to the various questions arising in their respective departments, and no small part of the duties of the office is that devoted to the investigations which are necessary to intelligently and properly advise in such cases. Necessarily much time is devoted to this work, but because of its character no record of it can be made.

UNOFFICIAL OPINIONS

In the report of this office immediately preceding this one the following statement on this subject appears and it may be repeated here:

"This office is not charged with the duty of advising county, and district officers, but, as a matter of courtesy to those making inquiry, and with a view to assisting, when possible, to a uniform administration of the laws regulating the conduct and prescribing the powers and duties of such officers, I have, upon requests therefor, written a large number of what may be termed unofficial opinions. A number of these communications indicating the character and scope of the inquiries are also incorporated in this report."

All such inquiries are replied to as promptly as the official duties of the office will permit, but it will be understood, of course, that official matters must have first consideration.

BOND ISSUES EXAMINED FOR THE STATE BOARD OF EDUCATION.

In pursuance of the policy of the State Board of Education to invest such of the State School Funds as are available for this purpose in securities issued by counties, municipalities and school and road districts in this State, it has been the duty of this office to examine a number of transcripts of the records of the proceedings had in the issuance of such bonds for the purpose of determining whether or not they were valid and enforceable obligations of the counties, municipalities or districts. Such issues as are purchased are held by the State Treasurer.

STATE STATUTES TESTED IN THE SUPREME COURT.

During the period covered by this report the constitutional validity of a number of State statutes upon important subjects have been challenged and tested by appropriate court proceedings.

CIVIL CASES.

Under the title Schedule of Civil Cases report is made of the civil cases which have had attention.

CRIMINAL CASES.

The Attorney General represents the State in the Supreme Court of the State in all criminal cases and in all habeas corpus proceedings.

Briefs on behalf of the State have been prepared and filed in the Supreme Court in all such cases and oral arguments on behalf of the State have been made in all of them in which oral arguments were requested and made by counsel for the plaintiffs in error.

PUBLISHING ACTS AND RESOLUTIONS OF THE STATE LEGISLATURE.

The Acts and Resolutions of the Legislature of this State for the regular session of 1921 were published, with marginal abstracts, as required by law, under the direction of this office.

An index to these laws and an index to the Journals of each branch of the Legislature were also prepared under the direction of this office, the index to the Journals having been prepared as provided by Chapter 6436, Acts of 1913, Laws of Florida.

REPORTER FOR THE SUPREME COURT.

The Attorney General is the Reporter for the Supreme Court.

During the period covered by this report four volumes of the opinions of the court have been published, namely, 80, 81, 82, 83, and Vol. 84 is now in the hands of the printer.

A great degree of care must be exercised in this work, as the opinions filed by the court are expected to be accurately reproduced in the reports.

An index-digest and a table of cases are also prepared in this office as a part of each volume of these reports.

Respectfully submitted,

RIVERS BUFORD,

Attorney General.

APPROPRIATIONS AND EXPENDITURES

Appropriations.

First six months, 1921—

Assistant	\$ 1,500.00
Assistant	1,500.00
Clerk	750.00
Stenographer	600.00
Incidental Expenses	250.00
Purchase of Books	250.00

For last six months, 1921—

Assistant	1,800.00
Assistant	1,800.00
Clerk	750.00
Stenographer	600.00
Incidental Expenses	250.00
Purchase of Books	250.00
Purchase of Book Cases and Office Fix- tures	100.00

For the year 1922—

Assistant	3,600.00
Assistant	3,600.00
Clerk	1,500.00
Stenographer	1,200.00
Incidental Expenses	500.00
Purchase of Books	500.00
Purchase of Book Cases and Office Fix- tures	200.00

Expenditures.

Assistant for years 1921-1922	\$ 6,900.00
Assistant for years 1921-1922	6,900.00
Clerk for years 1921-1922	3,000.00
Stenographer for years 1921-1922	2,400.00
Incidental Expenses for years 1921-1922..	1,309.22
Purchase of Books for years 1921-1922..	998.63
Purchase of Book Cases and Office Fix- tures for years 1921-1922.....	299.90

ITEMIZED STATEMENT

*Of Expenditures of Attorney General from the Appropria-
tion for the Purchase of Books.*

1921.

January—The Lawyers Co-operative Pub. Co., U. S. Advance Sheets, 1920 Term.....	\$ 2.00
Bancroft-Whitney Co., Amr. Law Rep. Vols. 7-8	15.00
L. D. Powell Co., Standard Ency. of Proc. Vol. 24	6.00
The Amer. Law Book Co., Corpus Juris Vol. 21	7.50
West Pub. Co., Amer. Dig. Vol. 8a; 2nd Dec. Dig. Vols. 13-14; Fed. Rep. Vols. 261, 262, 263, 264, 265; N. E. Rep. Vols. 126, 127; N. W. Rep. Vols. 176, 177, 178; Pac. Rep. Vols. 188, 189, 190, 191; So. Rep. Vols. 84, 85; S. E. Rep. Vols. 102, 103.....	108.75
February—The Banks Law Pub. Co., U. S. Rep. Vols. 251, 252.....	6.00
Bancroft-Whitney Co., Amr. Law Rep. Vol. 9	7.50
West Pub. Co., Pac. Rep. Vol. 192; Amr. Dig. Vol. 9a; Fed. Rep. Vol. 266.....	16.00

The Amr. Law Book Co., Corpus Juris Vol.	
14a	7.50
March—Bancroft-Whitney Co., Amr. Law Rep.	
Ann Dig. Service 1920, including Bound	
Volume—Index—Dig. (A. L. R. 1-9).....	2.50
West Pub. Co., Fed. Rep. Vol. 267; Pac. Rep.	
Vol. 193; S. E. Rep. Vol. 104; N. E. Rep.	
Vol. 128; N. W. Rep. Vol. 179.....	26.25
May—Bancroft-Whitney Co., Amr. Law Rep.	
Vol. 10	7.50
The Amr. Law Book Co., Corpus Juris Vol.	
23; Corpus Juris Ann. 1921.....	15.50
West Pub. Co., 2nd Dec. Dig. Vol. 15; N. W.	
Rep. Vol. 180; Fed. Rep. Vol. 268; Pac.	
Rep. Vol. 194	20.75
July—Bancroft-Whitney Co., Amr. Law Rep.	
Vol. 11; Dig. Ann. Cas. 1912a to 1918e—2	
Vols. in 1	22.50
The Bobbs Merrill Co., Wurts Dig. of Fla.	
Vol. 2 1915.....	10.00
The Frank Shepard Co., Shepard's Fla. Cita-	
tions commencing June 1921 issue.....	6.00
The Banks Law Pub. Co., U. S. Rep. Vols.	
253, 254	8.00
West Pub. Co., So. Rep. Vol. 86; N. E. Rep.	
Vol. 129; Amr. Dig., K. N. S., Vol. 10a; S.	
W. Rep. Vol. 227; Fed. Rep. Vol. 269; S.	
E. Rep. Vol. 105; June 1, 1921, Installment	
on Contract of March -8, 1921.....	94.00
H. & W. B. Drew Co., Wurts Dig. 1904 Ed.	15.13
September—West Pub. Co., Pac. Rep. Vols.	
195, 196; N. W. Rep. Vol. 181; N. E. Rep.	
Vol. 130; S. E. Rep. Vol. 106; Fed Rep.	
Vols. 270, 271; S. W. Rep. Vols. 228, 229;	
So. Rep. Vol. 87.....	50.25
Bancroft-Whitney Co., Amr. Law Rep. Vol.	
12	7.50

October—West Pub. Co., Fed. Rep. Vol. 272; S. W. Rep. Vol. 230; Pac. Rep. Vol. 197...	14.00
Callaghan & Co., Farnham on Waters, 3 Vols. New	22.50
Total amount expended in 1921.....	498.63

1922

January—West Pub. Co., Sept. 1st Installment on Contract of March 19, 1921; S. E. Rep. Vol. 107; N. E. Rep. Vol. 131; 2 Dec. Dig. Vol. 16; Sou. Rep. Vol. 88; Sou. Rep. Dig. Vols. 71-85; Pac. Rep. Vols. 198, 199, 200; Fed. Rep. Vol. 273; Am. Dig. Vol. 11a; S. W. Rep. Vols. 231, 232; N. W. Rep. Vols. 182, 183	\$ 127.50
Bancroft-Whitney Co., Amr. Law Rep. Vol. 13; Amr. Law Rep. Vol. 14	15.00
Amr. Law Book Co., Corpus Juris, Vols. 24, 25, 26	22.50
The Bobbs-Merrill Co., Fla. Dig. Anno. 3 Vols.	37.50
Callaghan & Co., Bishop on Statutory Crimes; Underhill Crim. Evi.	16.50
February—West Pub. Co., Dec. 1, 1921, Install- ment on Contract of March 19, 1921; S. E. Rep. Vol. 108; S. W. Rep. Vol. 233; Fed. Rep. Vol. 274; 2 Dec. Dig. Vol. 17.....	70.75
March—Amr. Law Book Co., Annual Anno. Corpus Juris-CYC, 1922	8.00
Bancroft-Whitney, Amr. Law Rep. Vol. 15.	7.50
The Lawyers Co-Operative Pub. Co., R. C. L. Sup. 1; U. S. Advance Sheets; R. C. L. Sup. 2	22.00
West Pub. Co., N. W. Rep. Vol. 184; Amr. Dig. Vol. 12a; 2 Dec. Dig. Vol. 18; Pac. Rep. Vol. 201; N. E. Rep. Vol. 132.....	27.50

The Banks Law Pub. Co., U. S. Rep. Vol. 255	4.00
West Pub. Co., March 1, Installment on Contract of March 19, 1921; S. W. Rep. Vol. 234; Fed. Rep. Vol. 275	59.00
April—Bancroft-Whitney Co., Amr. Law Rep. Dig. 1921	10.00
May—Amr. Law Book Co., Corpus Juris, Vol. 27	7.50
West Pub. Co., Pac. Rep. Vols. 202, 203; Fed. Rep. Vol. 276; So. Rep. Vol. 89; N. W. Rep. Vol. 185; N. E. Rep. Vol. 133; S. E. Rep. Vol. 109; S. W. Rep. Vols. 235, 236	46.25
July—Bancroft-Whitney Co., Amr. Law Rep. Vol. 17	7.50
The Frank Shepard Co., Year's Sub. to Shepard's Florida Citations, commencing with June, 1922, Issue	6.00
The Banks Law Pub. Co., U. S. Rep. Vol. 256	4.00
November—W. H. May, stamps to mail copies of "Fee Bill"	1.00
Total amount expended 1922.....\$	500.00

COMPILED STATEMENT OF BOOK ACCOUNT

Appropriations for first six months, 1921	\$250.00	
Appropriation for last six months, 1921.	250.00	
Appropriation for year 1922.....	500.00	
	<hr/>	
Total		\$ 1,000.00
Expended, as above itemized, during the year 1921	\$498.63	
Expended, as above itemized, during the year 1922	\$500.00	
	<hr/>	
Total amount expended 1921, 1922		998.63
Amount reverted to State	\$	1.37

ITEMIZED STATEMENT

Of Expenditures of Attorney General from Appropriation for Incidental Expenses

1921.	
January—W. C. Dixon, drayage	\$.50
Western Union Tel. Co., messages.....	4.95
R. H. Buford, expense trip Marianna <i>in re.</i> Inspection Industrial School for Boys....	3.72
February—Hill's Book Store, 1 stamp pad, memo pad, typewriter oil, 1 doz. pencils, 2 erasers	2.15
H. R. Kaufman, 1 pencil sharpener, paper knife, pin tray	3.95
T. J. Appleyard, 16 pounds paper, 2nd sheets	8.40
Southern Tel. & Const. Co., Telephone mes- sage to Jacksonville	1.00

Western Union Tel. Co., messages.....	1.34
R. H. Buford, 2 keys for office door.....	1.00
R. H. Buford, expense trip from Miami to Key West and return, to inspect railroad property	18.34
March—Western Union Tel. Co., messages....	5.00
Geo. I. Davis, Postmaster, stamps for office.	20.00
W. C. Dixon, drayage	1.00
Geo. D. Barnard, rubber stamp, book case, 5 boxes typewriter paper, 10 M embossed letter heads	208.99
American Surety Co. of N. Y., premium on notary bond of Miss Allie Yawn.....	5.00
Geo. D. Barnard, 3,000 sheets typewriter pa- per and express charges	24.07
April—Western Union Tel. Co., messages.....	3.00
P. B. Bird, agent S. A. L. Ry., mileage book.	30.00
Geo. I. Davis, Postmaster, stamps to mail out Biennial Report	20.00
W. C. Dixon, drayage	1.25
May—W. C. Dixon, drayage .....	.75
Hill's Book Store, scratch pads.....	2.10
Western Union Tel. Co., messages.....	4.59
Geo. D. Barnard & Co., 16 Units Globe-Wern- icke book cases, tops and bases.....	133.00
June—Western Union Tel. Co., messages.....	2.46
T. J. Appleyard, 1 box manuscript covers...	2.50
July—Hills Book Store, scratch pads.....	1.50
Southern Telephone & Const. Co., messages..	3.10
Western Union Tel. Co., messages.....	6.60
Underwood Typewriter Co., 1 typewriter...	94.25
R. H. Buford, expense trip to Jacksonville..	18.71
August—Southern Tel. & Const. Co., message.	.25
Western Union Tel. Co., messages.....	4.05
American Ry. Express Co., express on pkgs.	1.72
September—Geo. D. Barnard, lawyer's brief case, postage and insurance.....	12.90

Southern Tel. & Const. Co. ....	.90
Western Union Tel. Co., messages.....	5.19
October—Geo. I. Davis, Postmaster, stamps...	10.00
Hill's Book Store, 1 quart ink, pen points..	1.75
Western Union Tel. Co., messages.....	5.45
November—Southern Tel. & Const. Co., mes- sages . ....	.85
American Railway Express Co., express charges on book case	3.28
Western Union Tel. Co., messages.....	3.96
Underwood Typewriter Co., 1 cylinder for typewriter	3.00
W. L. Marshall, repairing book case.....	4.00
P. B. Bird, agent S. A. L. Ry., mileage book	30.00
R. H. Buford, expense trip Jacksonville <i>in re</i> . Tax Assessors' Convention	18.93
December—H. & W. B. Drew Co., 600 manu- script covers	16.60
Geo. D. Barnard & Co., 1 fac simile signature stamp	3.33
American Railway Express Co., express on 2 packages from Jacksonville.....	.97
Western Union Tel. Co., messages.....	1.53
Charles Williams Hardware Co., 1 pair scis- sors	1.50
H. R. Kaufman, 2 stamp pads, 2 letter trays	2.10
Geo. D. Barnard & Co., 10 boxes legal size paper, ruled, 2 stamps, and express.....	39.24
H. & W. B. Drew Co., 2½ boxes typewriter paper, legal size	4.50
Total amount expended, 1921	809.22

1922.

January—Western Union Tel. Co., messages..\$	1.47
Clark's Jewelry & Book Store, blue-red pen- cils and erasers .....	.70

Geo. I. Davis, Postmaster, stamps	12.00
February—Western Union Tel. Co., messages.	3.54
Southern Telephone & Const. Co., messages.	.65
March—W. H. May, Postmaster, first payment on 4,000 No. 5, and 1,000 No. 8 two-cent envelopes	10.56
American Ry. Express Co., express charges on transcript of record—Colin Mitchell et al v. U. S.—from Washington, D. C.....	.69
Western Union Tel. Co., messages.....	2.86
W. H. May, Postmaster, balance on envelopes	100.00
April—American Ry. Express Co., charges on transcript of record—Colin Mitchell et al v. U. S., to and from Washington, D. C., re- turned for proper certificate.....	1.78
Western Union Tel. Co., messages.....	4.74
May—Western Union Tel. Co., messages.....	2.39
June—W. H. May, Postmaster, stamps.....	14.00
H. R. Kaufman, box carbon, typewriter brush, 2 water glasses	3.80
Western Union Tel. Co., messages.....	4.32
Sou. Tel. & Const. Co., message to Quincy..	.25
American Ry. Express Co., charges on pack- age legal papers to Marianna .....	.37
P. B. Bird, agent S. A. L. Ry., 1 mileage book	30.00
R. H. Buford, expense trip to Orlando and return June 13 to 19	12.99
July—Sou. Tel. & Const. Co., message to Ma- rianna .....	.60
Western Union Tel. Co., messages.....	3.70
Frank Wideman, State Attorney, expense from Jacksonville to Tallahassee and re- turn—in re argument before Supreme Court of the case of John H. Pope v. State	27.99
August—T. J. Appleyard, printing name of At- torney General on 1500 letter heads.....	3.75

American Ry. Express Co., charges on package from Jacksonville	1.00
Western Union Tel. Co., messages	1.19
P. B. Bird, agent S. A. L. Ry., mileage book	30.00
R. H. Buford, expense trip to Jacksonville at direction of Governor	19.51
September—Sou. Tel. & Const. Co., message...	.60
H. R. Kaufman, spray and mosquito killer..	.75
T. J. Appleyard, 2,000 sheets onion skin paper	4.00
Western Union Tel. Co., messages.....	1.06
October—Western Union Tel. Co., messages...	.50
November—Leon Elec. Supply Co., electric radiator, and double socket	12.00
T. J. Appleyard, 1,000 slips ledger paper...	1.25
Western Union Tel. Co., messages.....	3.61
Rivers Buford, expense trip to convict camp to interview John Rawlins <i>in re</i> . case of State v. John H. Pope.....	13.88
American Surety Co., premium on notary bond for Bertha W. Bohler.....	5.00
Rivers Buford, expense trip Jacksonville <i>in re</i> . Convention Assessors of Taxes.....	6.39
Damerson-Pierson Co., 500 plain envelopes, 1 doz. pencils, 6 erasers, 2 boxes old Deerfield paper	6.95
December—Western Union Tel. Co., messages.	.38
Dixon Transfer Co., freight paid on box stationery and drayage	1.89
Chas. Williams Hardware Co., oil heater, bucket, 5 gallons kerosene oil and can, flash light	12.50
R. H. Buford, expense trip Blountstown and Port St. Joe, <i>in re</i> Constitutional Monument	7.00

Dameron-Pierson Co., 2 boxes file folders, 100 vertical envelopes	29.20
Grant Furniture Co., window shades, file cases	98.19
	<hr/>
Total amount expended, 1922.....	500.00

COMPILED STATEMENT OF INCIDENTAL EXPENSE ACCOUNT

Amount brought forward January 1, 1921	\$309.59
Appropriation for first six months, 1921	250.00
Appropriation for last six months, 1921	250.00
Appropriation for year 1922.....	500.00
	<hr/>
Total	\$ 1,309.59
Expended, as above itemized, during year 1921	\$809.22
Expended, as above itemized, during year 1922	500.00
	<hr/>
Total amount expended 1921-22...	\$ 1,309.22
	<hr/>
Amount reverted to State .....	.37

ITEMIZED STATEMENT

*Of Expenditures of Attorney General from Appropriation
Book Cases and Office Fixtures.*

1921.

July—O. C. Parker, changing sliding doors, furnishing material and erecting rail across room	\$ 50.00
September—Sears Roebuck & Co., 1 revolving book case	6.95
December—P. B. Bird, 1 mileage book.....	30.00
December—H. & W. B. Drew Co., 2½ boxes typewriter paper, legal size.....	12.95
Total amount expended 1921.....	\$ 99.90

1922.

July—West Pub. Co., S. W. Rep. Vol. 237; N. W. Rep. Vol. 186; Amr. Dig. Vol. 13a; Fed. Rep. Vol. 277; installment due June 1st on contract of March 19, 1921 (this amount was paid from this account because of the fact that it was past due and that the Book Fund for 1922 was exhausted) ..	\$ 71.75
December—L. C. Smith Typewriter Co., 1 type- writer	67.15
Grant Furniture Co., 1 desk, 1 bottle polish	61.10
Total amount expended 1922.....	\$ 200.00

COMPILED STATEMENT OF BOOK CASE AND
OFFICE FURNITURE FUND.

Appropriation for last six months,	
1921	\$100.00
Appropriation for year 1922.....	200.00
	<hr/>
Total	\$ 300.00
Expended, as above itemized, during	
year 1921	\$ 99.90
Expended, as above itemized, during	
year 1922	200.00
	<hr/>
Total amount expended 1921, 1922	\$ 299.90
	<hr/>
Amount reverted to State .....	.10

**SCHEDULE OF CIVIL CASES DISPOSED
OF BY THE SUPREME COURT
DURING THE YEARS
1921 AND 1922**

CHANCERY.

*Circuit Court 2nd Judicial Circuit of Florida in and for
Franklin County. In Chancery.*

*Apalachicola Land Development
Co., etc., et al., Complainants,
vs.*

*W. A. McRae, Commissioner of
Agriculture, Defendant.*

This suit was brought for the purpose of enjoining and restraining the Defendant from leasing or in any way interfering with the submerged lands of the Apalachicola Bay. A demurrer to bill of complaint was filed, which demurrer was sustained, and bill ordered dismissed by the Circuit Court. Complainants appealed to Supreme Court where case is now pending.

*In the Circuit Court of the Fourth Judicial Circuit,
Duval County, Florida.*

*Newcomb Barrs, Complainant,
v.*

*Ernest Amos, Comptroller,
Defendant.*

This is a suit brought to cancel certain tax certificates

issued upon certain property in Duval County upon sale of such property because of the non-payment of taxes for the years 1907, 1908 and 1909. A demurrer on behalf of the defendant has been filed but has not yet been disposed of

*In the Supreme Court of Florida.
In Chancery.*

*The Clark-Ray-Johnson Co.,
Appellant,*

vs.

*G. D. Schultz, as Clerk, etc., et al.,
Appellees.*

This was a case originating in the Circuit Court of Citrus County, wherein the Appellant sought to have certain tax sale certificates cancelled. A demurrer was filed to the bill of complaint, which demurrer was sustained. The Appellant entered an appeal from the order of the court sustaining the demurrer to the Supreme Court, where the cause is now pending.

*Circuit Court Second Judicial Circuit of Florida, in and
for Leon County. In Chancery.*

*Columbus Carmichael, et al.,
..Complainants,*

vs.

*Cary A. Hardee, as Governor, et al.,
Defendants.*

The Complainants filed their bill praying that an injunction be granted restraining and enjoining the said

Board of Commissioners of State Institutions from expending any money whatsoever for the improvement of the Capitol Building. Application for temporary injunction denied. Case dismissed.

*In the Circuit Court Fifteenth Judicial Circuit of Florida
in and for St. Lucie County. In Chancery.*

*William E. Feazel, Sr.,
Complainant,*

vs.

*State Bank of Fellsmere, a Corporation,
Chas. H. Piffard and Ernest Amos,
Comptroller, Defendants.*

This case originated in the Circuit Court of St. Lucie County, and was instituted for the purpose of vacating the appointment of a Receiver for said Bank by the Circuit Judge. Attorney General filed petition asking that order of court be set aside, which petition was denied and an appeal taken to the Supreme Court. Order for supersedeas granted, after which the matter was adjusted out of court and appeal and suit dismissed.

*Circuit Court, 2nd Judicial Circuit of Florida in and for
Leon County. In Chancery.*

*Shelton J. Gunn, etc.,
Complainant,*

vs.

*Ernest Amos, Comptroller,
Defendant.*

This suit was brought for the purpose of restraining and

enjoining the Comptroller from carrying out or enforcing the provisions of Chapter 8411, Laws of Florida, Acts of 1921, commonly referred to as the "Gasoline Tax Law," upon the ground that such law was unconstitutional and void. The Defendant filed a demurrer to the bill which was overruled, and from this order an appeal was taken to the Supreme Court. Order of lower court reversed with direction to dismiss the bill. Reported in 84 Fla. —, So.

*Circuit Court 5th Judicial Circuit of Florida in and for
Marion County. In Chancery.*

*William S. Hood, as Trustee,
Complainant,
vs.
Ocklawaha Valley Railroad Co.,
Defendant.*

A petition for intervention was filed by the Comptroller in this suit for the purpose of securing the payment of taxes due. Settlement was made and suit dismissed.

*Supreme Court, State of Florida.
In Chancery.*

*Percy Nelson, Appellant,
vs.
State of Florida, on relation of William
Fisher, as County Solicitor of
Escambia County, Appellee.*

The County Solicitor of Escambia County filed a bill of complaint in the Circuit Court against Nelson under the

provisions of Section 3223 to 3227, R. G. S., which provide for complaints and granting of injunctions against operators of houses for prostitution and lewdness. Temporary injunction granted, from which order case appealed to Supreme Court, where the order appealed from was affirmed. Reported in 84 Fla. —, — So. —.

Circuit Court 2nd Judicial Circuit of Florida in and for Franklin County. In Chancery.

*Geo. W. Saxon, and Saint George
Co-operative Colony, Complainants,
vs.*

*W. A. McRae, Commissioner of
Agriculture, et al., Defendants.*

This suit was brought for the purpose of enjoining and restraining the Defendant from leasing or in any way interfering with the submerged lands of the Apalachicola Bay. A demurrer to the bill of complaint was filed, which demurrer was sustained. Case stands in status quo awaiting decision from Supreme Court in the case of Apalachicola Land & Dev. Co. et al v. W. A. McRae.

In the District Court of the United States for the Northern District of Florida. In Chancery.

*Seaboard Air Line Railway
Company, Plaintiff,
vs.*

*Ernest Amos, as Comptroller,
Defendant.*

This suit was brought for the purpose of restraining the Defendant from issuing any warrant or warrants, execu-

tion or executions for taxes claimed to be due by said Railway Company under the assessment of the rolling stock of said Company for the year 1919. Taxes paid and suit dismissed.

*Circuit Court, Suwannee County, Florida.
In Chancery.*

*Seaboard Air Line Railway,
Complainant,
vs.
Suwannee County, and G. W.
Brannan, et al., Defendants.*

This suit was instituted for the purpose of enjoining and restraining the defendants from using and occupying for highway purposes, or otherwise, the Complainant's right of way. Pending a tentative settlement and adjustment of the question involved this suit stands in status quo.

COMMON LAW.

In Circuit Court, Leon County.

*American Railway Express Co.,
Plaintiff,
v.
Ernest Amos,
Defendant.*

This suit was instituted by the Plaintiff against the Defendant for the purpose of recovering the amount of license taxes paid by the said Plaintiff for registering certain motor vehicles, which license was claimed by the Plaintiff

to not to be required of such vehicles, it having paid the tax provided by law (Chapter 6421, Acts 1913), which relieved it from paying any further license tax. This suit is now pending.

*In the Circuit Court of the Eighth Judicial Circuit,
Alachua County, Florida.*

King Lumber Co., Plaintiff.

v.

State Board of Control, Defendant.

This is a suit brought by the plaintiff against the defendant to recover a balance alleged to be due by the defendant to the plaintiff on account of a contract for the construction of a building by the plaintiff for the defendant on the grounds of the University of Florida at Gainesville. This case is now pending in the court on the demurrer to plaintiff's replication.

*In the Circuit Court of the Second Judicial Circuit,
Leon County, Florida.*

*Park Trammell et al., as the Board of
Commissioners for State Institutions,
Plaintiffs,*

v.

*DeLeon Naval Stores Company,
a Corporation, et al., Defendant.*

This is a suit brought in the Circuit Court of Leon County against the DeLeon Naval Stores Company, a corporation, lessee of State prisoners, and its bondsmen for

a balance due by it on account of its contract with the Board of Commissioners of State Institutions for the lease of such prisoners. The amount due was \$6,060.74. The executors of the estate of J. B. Conrad, deceased, one of the sureties on the bond of this defendant, have paid to the Board the sum of \$2,000.00, the amount of the obligation of this decedent on the bond. The case is now pending before the court.

MANDAMUS

In the Circuit Court, Leon County.

*Central Florida Oil and Gas Co.,
Realtor,*

vs.

*Ernest Amos, as Comptroller, and
Van C. Swearingen, As Attorney
General, Respondent.*

The Relator filed a petition for mandamus, seeking to cause the Respondents, who as such officers compose the Investment Board to authorize the sale of securities under the "Blue Sky" law, to issue to it a permit without limitations or restrictions. Judgment for Relator. Case appealed to Supreme Court and judgment of lower court affirmed. Reported in 81 Fla. 428, 88 So. 272.

In the Supreme Court of Florida

State of Florida, ex rel. A. C. L.

R. R. Co., Relator,

vs.

*The Board of Equalizers of the State of
Florida, consisting of Cary A. Hardee,
Governor, Rivers Buford, Attorney
General,, and J. C. Luning, Treasurer,
Respondents.*

This is an action brought by the Relator praying a Writ of Mandamus from this Honorable Court directing the Board to immediately take jurisdiction of an alleged appeal from an assessment alleged to have been made upon Relator's property by the Comptroller. The court ordered that a peremptory writ of mandamus be awarded. Motion for rehearing by Attorney General denied.

In the Supreme Court of Florida.

State of Florida, ex rel. Florida East

Coast Ry. Co., Relator,

vs.

*The Board of Equalizers of the State of
Florida, consisting of Cary A. Hardee,
Governor, Rivers Buford, Attorney
General, and J. C. Luning, Treasurer,
..Respondents.*

This is an action brought by the Relator praying a Writ of Mandamus from this Honorable Court directing the Board to immediately take jurisdiction of an alleged appeal from an assessment alleged to have been made upon Relator's property by the Comptroller. The court ordered

that a peremptory writ of mandamus be awarded. Motion for rehearing filed by Attorney General and denied.

In the Supreme Court of Florida.

State ex rel. Rivers H. Buford,
as Attorney General, Relator,
vs.
Henry Clay Crawford, as Secretary
of State, Respondent.

A petition for a Writ of Mandamus was filed in this Court seeking to settle the uncertain status of the measures attempted to be vetoed by the Governor. Upon due consideration of the petition the Court ordered an adjudged that the petition be denied upon the ground that no prima facie case for mandamus had been made or presented by the petition.

In the Supreme Court of Florida.

State ex rel. Rivers H. Buford,
Attorney General, Relator,
vs.
E. C. Davis, Judge of the Circuit
Court of the 15th Judicial Circuit
of Florida, Respondent.

This was a mandamus proceeding brought for the purpose of seeking to force the respondent to assume jurisdiction of the case of Grace V. Howell, who was charged with the offense of murder in the first degree, and to proceed to try and determine the same in due course. The matters

involved were adjusted and settled and the case was dismissed upon motion of the Attorney General. Reported in 82 Fla. —, — So. —.

In the Supreme Court of Florida.

State ex rel Rivers H. Buford,
Attorney General, Relator,

vs.

W. C. Spencer, Sheriff Hillsborough
County, Respondent.

The Attorney General filed a petition in the above named court seeking the issuance of a writ of mandamus to cause the Respondent to comply with the provisions of Chapter 7334, Laws of Florida, Acts of 1917, in so far as the same places the duty upon said Respondent to appoint his deputies, clerks, etc. Alternative Writ of Mandamus issued. The Respondent filed a motion to quash the Alternative Writ. Motion granted. Reported in 81 Fla. 211, 87 So. 634.

In the Supreme Court of Florida.

State ex rel. Rivers H. Buford,
Attorney General, Relator,

vs.

Ben Shepard, Clerk Circuit Court of
Dade County, Florida, Respondent.

The Attorney General filed a petition in the above named court seeking the issuance of a Writ of Mandamus to cause the Respondent to comply with certain provisions of

Chapter 8479, Acts of 1921. Writ issued. Respondent filed return to said Writ; also motion to quash. Court ordered that a Peremptory Writ of Mandamus be awarded. Petition for rehearing was filed by Respondent, which petition was denied. Reported in 84 Fla. —, — So. —.

*In the Circuit Court Second Judicial Circuit of Florida in
and for Leon County.*

State of Florida ex rel.

W. H. Cox, Relator,

vs.

*Ernest Amos, as Comptroller of the
State of Florida, Respondent.*

This was a case brought by the Relator seeking mandamus to compel respondent to pay out of the 1921 appropriation for the State Board of Health a balance or balances claimed to be due said Relator for traveling expenses, etc. An alternative writ of mandamus was issued, and motion made by Respondent to quash the writ. No action taken by court.

In the Circuit Court, Alachua County.

State ex rel. E. C. F. Sanchez

and Mabel A. B. Sanchez, Complainants,

vs.

*S. H. Wienges, Clerk Circuit Court,
Defendant.*

The Complainant filed a bill praying for a Writ of Mandamus to issue to cause the Appellee to permit the redemp-

tion of certain tax certificates, alleging that such redemption was authorized by Chapter 7272, Laws of 1917. The Defendant filed a demurrer to the bill, and the case is now pending.

In the Supreme Court of Florida.

*State ex rel. State Live Stock Sanitary
Board v. W. E. Graddick.*

This case came to this court upon application of the Relator for an Alternative Writ of Mandamus, requiring the Respondent to comply with the terms of a rule promulgated under the authority of Chapter 7345, Acts of 1917, requiring owners of cattle to dip them for the purpose of eradicating ticks. The court denied the writ and dismissed the petition. Reported in 82 Fla. 15, 89 So. 361.

In the Supreme Court of Florida.

*State ex rel. State Live Stock Sanitary
Board v. W. E. Graddick.*

Dismissed on motion of Attorney General. See other case decided. Reported in 81 Fla. 902, 88 So. 920.

In the Supreme Court of Florida.

State ex rel. A. H. Wolyn, Relator,
vs. (2 Suits)
*Apalachicola Northern Railroad
Company, et al., Respondents.*

This was a case brought by the Relator seeking man-

damus to compel the respondent to place at the request of Relator a car at its siding at Vilas, Liberty County, Florida, for and in which the Relator could ship Japanese seed cane, etc. Writ was issued. A demurrer was filed to the alternative writ, which demurrer was overruled, holding that there was no proper basis for the quarantine order complained of and such order was therefore not sufficient ground for the refusal of the Respondent railroad company to supply a car as requested. Return to alternative writ was filed by Respondents, and the Relator thereupon made motion to quash, which motion was granted and peremptory writ awarded. Reported in 81 Fla. 383, 394, 87 So. 909, 88 So. 310.

CERTIORARI.

In the Supreme Court of Florida.

George Atz, Petitioner,

vs.

*C. O. Andrews, As Circuit Judge,
Defendant.*

Petitioner was informed against in the County Judge's Court of Lake County, charged with having in his possession certain moonshine liquors contrary to the statute; was tried and convicted. Case appealed to the Circuit Court and judgment affirmed, thereupon case was brought to this court on Certiorari, and the Court ordered that the judgment of the County Judge's Court affirmed by the Circuit Court be quashed. Reported in 84 Fla. —, — So. —

In the Supreme Court of Florida.

John Haile, Petitioner,

vs.

*W. S. Bullock, as Judge, etc.,
et al., Defendants.*

Petitioner was informed against in the County Judge's Court of Marion County, charged with unlawfully having in his possession certain intoxicating liquor contrary to the statute, was tried and convicted. Case appealed to Circuit Court and judgment affirmed, thereupon case was brought to this Court on Certiorari, and the Court adjudged that the judgment of conviction rendered by the County Judge's Court for Marion County and affirmed by the Circuit Court be quashed. Reported in 83 Fla. 538, 91 So. 683.

In the Supreme Court of Florida.

*The Coe-Mortimer Co.,
Petitioner,*

vs.

*The State of Florida,
Defendant.*

Petitioner was informed against in the County Court of St. Lucie County, charged with the violation of Section 3726 of the General Statutes, and was convicted. Case appealed to Circuit Court and judgment affirmed, thereupon case was brought to this Court on Certiorari, and the court adjudged that the judgment of conviction rendered by the County Court for St. Lucie County and affirmed by the Circuit Court is illegal and should be quashed. Reported in 83 Fla. 370, 91 So. 265.

*In the Supreme Court of Florida.**J. M. Saucer, Petitioner,**vs.*

(2 Cases)

State of Florida, Defendant.

Petitioner was informed against in the County Court of Seminole County, charged with the offense of having in his possession intoxicating liquors, and was convicted. Case appealed to Circuit Court and judgment affirmed, thereupon case was brought to this Court on Certiorari, and this Court ordered that the judgments of conviction affirmed by the Circuit Court for Seminole County in the two cases as above styled be quashed. Reported in 83 Fla. 78-79, 90 So. 703.

HABEAS CORPUS.
*State ex rel. L. S. Bonsteel**v. Louis A. Allen, Sheriff.*

Bonsteel was arrested on a capias issuing out of the Criminal Court of Record in and for Dade County, charging a violation of certain sections of Chapter 8410, Laws of Florida, relating to motor vehicles. Release was sought by writ of habeas corpus issuing out of this court. Motion to quash return of Respondent was denied and Petitioner remanded, the court holding said statute to be constitutional. Reported in 83 Fla. 214, 91 So. 104.

*State ex rel. Edgar C. Frady,**v. Louis A. Allen, Sheriff.*

Frady was indicted by the Grand Jury of Dade County, Florida, for murder in the first degree. He applied

for a writ of habeas corpus which was granted. A hearing was had on said application and testimony introduced both on behalf of the State and the Defendant. The court refused to admit the relator to bail. To this order the relator took writ of error to the Supreme Court, where the judgment of the Circuit Court for Dade County was affirmed. Reported in 84 Fla. —, — So. —.

State ex rel. James Gallat
v. Louis A. Allen, Sheriff.

Writ of habeas Corpus was sued out before the Judge of the Eleventh Judicial Circuit of Florida, and that court, after demurrer to the return to said writ, made an order allowing the petitioner a writ of error, the petitioner filed a petition asking and requesting the court to fix the amount and conditions of a supersedeas bond. The court denied said petition, and refused to allow petitioner to file bond, whereupon petitioner prayed that appellate court enter an order fixing the amount and conditions of a supersedeas bond. Order granting supersedeas was made. Reported in 83 Fla. 729, 92 So. 541.

State ex rel B. C. Grantham
v. Louis A. Allen, Sheriff.

Grantham was informed against in the Criminal Court of Record of Dade County, charged with the offense of issuing a worthless check; was tried and found guilty from which judgment writ of error was sued out to the Supreme Court where the judgment of the Criminal Court was affirmed. Grantham was arrested and taken into custody, whereupon petition for writ of habeas corpus was filed in the Circuit Court of Dade County, which petition was denied, from which order and judgment the Plaintiff in Error brings writ of error to the Supreme Court where the judgment of the Circuit Court for Dade County was affirmed. Reported in 84 Fla. —, — So. —.

State ex rel. Walter Hall
v. D. W. Morgan, Sheriff.

Information was filed in the Criminal Court of Record, charging Hall with having in his possession certain alcoholic and intoxicating liquors and beverages. Writ of habeas corpus was sued out, a hearing had before the Circuit Judge and an order entered denying petitioner any relief, dismissing the petition, and remanding petitioner, from such judgment writ of error issued. Judgment of the Circuit Court for Dade County reversed. Reported in 81 Fla. 706, 89 So. 104.

State ex rel. Harcourt Johnson
v. H. Leslie Quigg, as Chief of Police.

This was a habeas corpus proceeding brought to this court, but the appeal was never perfected, and was dismissed upon motion of the Attorney General. Reported in 83 Fla. 1, 90 So. 695.

State ex rel. George Hepburn
v. Louis A. Allen, Sheriff.

This was a habeas corpus case brought here from the Circuit Court of Dade County, but the appeal was never effected and was dismissed upon motion of the Attorney General. Reported in 83 Fla. 734, 92 So. 544.

State ex rel. J. D. Myers
v. Louis A. Allen, Sheriff.

Myers was arrested upon warrant of the Governor of the State of Florida, the warrant having been issued upon requisition papers of the Governor of Utah. Petition for writ of habeas corpus was filed in the Supreme Court and the writ was issued and made returnable before the Judge

of the Eleventh Judicial Circuit, where the petitioner was remanded to the custody of the Sheriff. The case was then brought to the Supreme Court on writ of error, where the judgment of the Circuit Court of Dade County was affirmed. Reported in 83 Fla. 655, 92 So. 155.

State ex rel. Walter Roberts
v. D. W. Moran, Sheriff.

This was a habeas corpus proceeding brought to this court, but the appeal was never perfected, and was dismissed upon motion of the Attorney General. Reported in 83 Fla. 732, 92 So. 542.

State ex rel. Robert Thompson
v. Louis A. Allen, Sheriff.

This was a habeas corpus case brought here from the Circuit Court of Dade County, but the appeal was never effected and was dismissed upon motion of the Attorney General. Reported in 83 Fla. 731, 92 So. 542.

Ex Parte M. Garvey.

Garvey was charged by information filed by the County Solicitor of Hillsborough County of the violation of Chapter 8401, Acts of 1921. Upon habeas corpus before the Circuit Court the Petitioner was remanded to custody of the Sheriff, and from such order a writ of error was sued out to the Supreme Court. Judgment Circuit Court reversed because of insufficiency of the indictment. Reported in 84 Fla. . . , — So. —.

J. T. Higginbotham and W. A. Higginbotham
v. R. E. Merritt, Sheriff of Duval County.

The Plaintiffs in Error were held in the custody of the Defendant in error by virtue of an affidavit and warrant

charging them with a capital offense—murder in the first degree. Upon a hearing in habeas corpus proceedings they were remanded without bail, and relief was sought in this court by writ of error. Judgment of the Circuit Court of Duval County was affirmed. Reported in 82 Fla. 413, 90 So. 336.

Ex Parte, Luke Johnson.

Johnson was informed against in the County Judge's Court in and for Alachua County, charged with selling intoxicating liquors, and having in his possession at his residence 2 gallons of moonshine whiskey, and having in his possession at his pool room 2 gallons of intoxicating liquors, in which court Johnson was found guilty. Petition for writ of habeas corpus was filed in the Circuit Court, where Petitioner was remanded to the custody of the Sheriff. Writ of error and supersedeas were allowed by the Judge of the Circuit Court and Petitioner sued out writ of error to this court, where it was ordered that the judgment remanding petitioner to the custody of the Sheriff on a commitment issued under the sentence of the County Judge be reversed with directions to remand the petitioner for further appropriate proceedings by the County Judge. Reported in 81 Fla. 783, 89 So. 114.

John Haile v. W. J. Gardner.

Haile was tried before the County Judge of Marion County upon affidavit and warrant in which it was charged that he did unlawfully have in his possession certain intoxicating liquors, and by verdict of a jury was found guilty as charged. This conviction was affirmed by the Circuit Court upon appeal. Discharge on habeas corpus was refused and petitioner brought writ to this court, where the judgment of the Circuit Court for Marion County was affirmed. Petition for rehearing was filed and denied. Reported in 82 Fla. 355, — So. —.

Leroy McCormick by W. F. McCormick his next friend, v. Carl S. Russ, Sheriff.

Leroy McCormick was arrested on a warrant issued out of the County Judge's Court of Bay County, charged with assault and battery; was discharged, and after being so discharged the County Judge issued his alias warrant and defendant was again brought before the court, sentenced and remanded to the custody of the Sheriff. Petition for habeas corpus was filed in the Circuit Court where petitioner was remanded to the custody of the Sheriff, and then Petitioner brought case to this court upon writ of error. Judgment of Circuit Court for Bay County was affirmed. Reported in 82 Fla. 4, 89 So. 224.

John Phillips v. Thad Bell, Sheriff.

Phillips was arrested under a warrant issued out of the County Judge's Court of Okaloosa County, Florida, charged with violating Chapter 7917, Laws of Florida, Acts of 1919; tried and found guilty of said charge, whereupon petition for writ of habeas corpus was filed in the Circuit Court in and for Walton County and Petitioner remanded to the custody of the Sheriff. From such order writ of error was sued out to the Supreme Court, where judgment of the Circuit Court was affirmed. Reported in 84 Fla. —, — So. —.

E. L. Rasmussen v. Frank Tippins, Sheriff.

Affidavit was made in the County Judge's Court of Lee County, charging that Rasmussen did practice Chiropractic without first having obtained a certificate from the Florida State Board of Chiropractic Examiners. Warrant issued and petitioner arrested. Petition for writ of habeas corpus was presented to the Judge of the Circuit Court for Lee County. Ordered that Petitioner be remanded to the cus-

tody of the Sheriff, upon which order writ of error was taken to this court. Judgment of the Circuit Court for Lee County was affirmed. Reported in 83 Fla. 530, 91 So. 560.

S. Zeff and H. Fraiden
v. R. E. Merritt, Sheriff.

Petitioners were charged with a violation of Chapter 8401, Laws of Florida, Acts of 1921. Petition for writ of habeas corpus was filed in the Circuit Court which petition was denied; from which order writ of error was sued out to the Supreme Court, where judgment of the Circuit Court was affirmed. Reported in 84 Fla. —, — So. —.

QUO WARRANTO.

Authority was given by the Attorney General to the parties whose names appear below to institute proceedings in *quo warranto*. Statement of the purpose of the suit is given in each case.

John S. Mathews, Jacksonville, Fla.
 December 30, 1921.

Authority granted to use the name of the Attorney General for the purpose of testing the legality of an election held in the City of South Jacksonville.

Gardiner & Brass, Daytona, Fla.
 October 27, 1921.

Authority granted to use the name of the Attorney General for the purpose of testing the validity of franchises for toll bridges claimed by Halifax River Bridge & Railway Company.

Gardiner & Brass, Daytona, Fla.

October 27, 1921.

Authority granted to use the name of the Attorney General for the purpose of testing the validity of franchises for toll bridges claimed by Daytona Bridge Company.

R. Pope Reese, Pensacola, Fla.

October 28, 1922.

Authority granted to use the name of the Attorney General for the purpose of collecting from the Trustees of the Flagler estate taxes due for the year 1920, and the back taxes of 1916, 1917, 1918 and 1919.

TABULATED REPORT OF CRIMINAL CASES IN WHICH OPINIONS WERE FILED BY
THE SUPREME COURT DURING THE YEARS 1921 AND 1922.
CASES DISPOSED OF DURING JANUARY TERM, 1921, AND REPORTED IN EIGHTY-
FIRST FLORIDA REPORT.

Name of Offender.	Offense.	County.	Court.	Disposition.
Jess Albritton	Larceny	Taylor	Circuit	Reversed
L. R. Dukes.....	Concealment of embezzled property	Duval	Circuit	Affirmed
Robert H. Edington.....	Breaking and entering	Dade	Circuit	Affirmed
Anna Henry	Murder 1st degree	Suwannee	Circuit	Affirmed
Willie Hill	Arson	Jefferson	Circuit	Dismissed
Willie Jowers	Rape	Suwannee	Circuit	Affirmed
Bernice E. Larman.....	Murder 1st degree	Leon	Circuit	Affirmed
James Moore	Larceny	Duval	Criminal	Reversed
Bascom Parker .....	.....	Okaloosa	Circuit	Dismissed
Adam Parramare and Anne Brooks	Occupying same room	Jackson	Circuit	Affirmed
Pratt Poyner	Robbery	Jackson	Circuit	Reversed
Laurence Revels, et al.....	Larceny	Lake	Circuit	Affirmed
Joe Simpson	Breaking and entering	Bay	Circuit	Reversed
Will Tillman	Assault to murder.....	Manatee	Circuit	Reversed
Henry Underhill	Grand larceny	DeSoto	Circuit	Affirmed
Burnard Whitten	Murder 1st degree	DeSoto	Circuit	Reversed

CASES DISPOSED OF DURING JUNE TERM, 1921, AND REPORTED IN EIGHTY-
SECOND FLORIDA REPORT.

Name of Offender.	Offense.	County.	Court.	Disposition.
Samp Albritton	Drunkenness	DeSoto	Circuit	Reversed
Victor Albritton	Drunkenness	DeSoto	Circuit	Reversed
John Benton	Desertion	Holmes	Circuit	Reversed
John Bradley	Murder 2d degree	Holmes	Circuit	Reversed
Preston Brown	Assault to murder.....	DeSoto	Circuit	Affirmed
Andrea Capello	Grand larceny	Hillsborough	Criminal	Affirmed
Dade Cornley	Larceny	Santa Rosa	Circuit	Reversed
C M. Clay	Grand embezzlement.....	Duval	Criminal	Reversed
Geo. W. Cobb	Adultery	Dade	Criminal	Reversed
Elbert Coker	Rape	DeSoto	Circuit	Reversed
John Collinsworth et al.....	Breaking and entering	Santa Rosa	Circuit	Affirmed
Raymond Cooper	Larceny	Santa Rosa	Circuit	Reversed
Virgil Croft	Murder	Suwannee	Circuit	Reversed
Elijah Daniels	Murder	Hillsborough	Circuit	Affirmed
Lee Donald et al.	Breaking and entering	Gadsden	Circuit	Abandoned
J. N. Driggers et al.	Grand larceny	Lee	Circuit	Reversed
Jim Ephriam et al.	Crime against nature	Alachua	Circuit	Affirmed
S C. Groover	Larceny	Leon	Circuit	Affirmed
Dan Kirkland et al.....	Grand larceny	LaFayette	Circuit	Affirmed

Charley Moneyham	Carnal intercourse	Jackson	Circuit	Affirmed
Willie Outlaw	Assault to murder	Walton	Circuit	Reversed
Joe Pittman	Murder 2d degree	Jackson	Circuit	Affirmed
J. F. Prevatt	Murder 3d degree	Palm Beach	Circuit	Affirmed
Charles Randall	Issuing worthless check	Palm Beach	Circuit	Reversed
Warren Scarborough	Forgery	Walton	Circuit	Reversed
Erwin Sessions	Murder 2d degree	Hillsborough	Circuit	Affirmed
Benj. Sparkman	Rape	Volusia	Circuit	Reversed
Sam Taylor and Lillie Mae Williams	Adultery	Bay	Circuit	Reversed
Charles Walker	Arson	Manatee	Circuit	Affirmed
George Ward	Assault to murder	Santa Rosa	Circuit	Affirmed
John Worster, Jr.	Receiving stolen goods	Duval	Criminal	Reversed

CASE DISPOSED OF DURING JANUARY TERM, 1922, and REPORTED IN EIGHTY-THIRD FLORIDA REPORT.

Name of Offender.	Offense.	County.	Court	Disposition.
Chas. F. Adkinson	Keeping gambling house	Walton	Circuit	Affirmed
C. E. Bannister.....	.....	Dade	Criminal	Dismissed
John M. Bush	Carnal intercourse	Holmes	Circuit	Reversed
Walton Cohen	Larceny	Hillsborough	Criminal	Dismissed
Elbert Coker	Rape	Hardee	Circuit	Reversed
E. E. Collins	Enticing, etc.	Dade	Criminal	Reversed
Peyton Cooper	Breaking and entering	LaFayette	Circuit	Reversed
Tom Ellis	Perjury	Santa Rosa	County	Affirmed
A. Garcia .....	.....	Hillsborough	Criminal	Dismissed
B. C. Grantham	Issuing worthless check	Dade	Criminal	Affirmed
W. M. Grooms	Grand larceny	Manatee	Circuit	Reversed
William R. Haager	Murder 2d degree	Hillsborough	Circuit	Affirmed
Robert Hall	Violation liquor law	DeSoto	Circuit	Reversed
Joseph C. Hobbs	Manslaughter	Duval	Criminal	Affirmed
John Holland	Assault to Rape	Santa Rosa	Circuit	Reversed
W. L. Jernigan	Forgery	Santa Rosa	Circuit	Reversed
Lawis Mercer	Incest	Hardee	Circuit	Affirmed
Willie Moore and Frank Sanders	Injury to building	Orange	Criminal	Affirmed

W. D. Morrison .....	.....	Holmes	Circuit	Dismissed
William D. McNelty	Manslaughter	Osceola	Circuit	Dismissed
James M. Oglesby	Manslaughter	Seminole	Circuit	Affirmed
Lula Pinckney.....	Manslaughter	Madison	Circuit	Affirmed
C. Ben Plummer.....	Embezzlement	Dade	Criminal	Reversed
Willie Ryan	Murder 1st degree	Suwannee	Circuit	Affirmed
J. D. Steele .....	.....	Walton	Circuit	Dismissed
Willie Straughter	Murder 1st degree	Madison	Circuit	Reversed
Donivan Studstill et al.	Cutting fence	Madison	Circuit	Affirmed
Elmore Tucker .....	.....	Pasco	Circuit	Dismissed
Enoch Tyson	Desertion	Osceola	Circuit	Affirmed
Geo. Ward	Perjury	Santa Rosa	Circuit	Affirmed
F. W. Williams	Operating gambling house	Pinellas	Circuit	Dismissed
W. E. Woods	Larceny)	Hillsborough	Criminal	Dismissed

CASES DISPOSED OF DURING JUNE TERM, 1922, AND REPORTED IN EIGHTY-
FOURTH FLORIDA REPORT.

Name of Offender.	Offense.	County.	Court.	Disposition.
A. L. Brantley	Sending threatening letter	DeSoto	Circuit	Affirmed
Laura Brown	Manslaughter	Suwannee	Circuit	Reversed
Charles H. Breen	Murder 2d degree	Dade	Circuit	Affirmed
Willie Carr	Grand larceny	Orange	Criminal	Affirmed
Jack Cruce	Murder 1st degree	Taylor	Circuit	Reversed
Willie Dicks	Manslaughter	Union	Circuit	Affirmed
Nathan Isaac	Carnal intercourse	Duval	Criminal	Reversed
John Jackson	Crime against nature	Highlands	Circuit	Affirmed
A. J. Krenshaw	Embezzlement	Monroe	Criminal	Reversed
Robert Montsdoea	Robbery	Osceola	Circuit	Affirmed
Theodore H. Moskovitz	Grand larceny	Duval	Criminal	Dismissed
William Myers (2 cases)	Forgery	DeSoto	Circuit	Affirmed
Jake Newman	Manslaughter	Washington	Circuit	Affirmed
R. R. Padgett	Perjury	Duval	Criminal	Affirmed
J. E. Porter	Grand larceny	Duval	Criminal	Reversed
Andrew Price .....	.....	Walton	Circuit	Dismissed
Ed. C. Raker	Murder 2d degree	Wakulla	Circuit	Reversed
E. A. Sequi	Uttering worthless check	Duval	Criminal	Dismissed
T. W. Shuler	Manslaughter	Jackson	Circuit	Affirmed

Ben Smithie	Murder 1st degree	LaFayette	Circuit	Reversed
Henry Spikes	Shooting into dwelling	Marion	Circuit	Dismissed
C. T. Sutton et al.	Murder 1st degree	Seminole	Circuit	Affirmed
Hattie White	Murder 3rd degree	Hillsborough	Circuit	Affirmed

OFFICIAL OPINIONS

MARKS AND BRANDS—INSPECTOR—APPOINTMENT.

Tallahassee, Fla., January 8th, 1921.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Governor:

Replying to your request relative to appointment of Inspector of Marks and Brands for Hillsborough County, I beg to advise:

That under the provisions of Section 3111, General Statutes, as amended by Chapter 5234, Acts of 1903, and Chapter 5666, Acts of 1907, and compiled as Section 3111 in the Compiled Laws of Florida by West Publishing Company of 1914, it would be your duty to appoint as Inspector of Marks and Brands a person recommended by the Board of County Commissioners of the County in which the appointment is to be made.

Yours very truly,

RIVERS BUFORD,

Attorney General.

REPRIEVES—SUCCESSIVE.

Tallahassee, Fla., January 15th, 1921.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Governor:

Replying to your inquiry as to the authority of the Governor to grant reprieves, I advise:

That under the provisions of Section 11, Article 4, of the Constitution of Florida, the Governor has power to suspend the collection of fines and forfeitures and grant reprieves for a period not exceeding sixty days, for all offenses except in cases of impeachment.

The Supreme Court of our State, in an advisory opinion to the Governor, reported in 55th Sou., page 865, held that the Governor may grant two or more successive reprieves in the same case aggregating more than sixty days, but no one reprieve shall exceed more than sixty days.

Yours very truly,
RIVERS BUFORD,
Attorney General.

ADJUTANT-GENERAL—FUNDS COLLECTED.

Tallahassee, Fla., January 17, 1921.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Sir:

Replying to your request, as made by Mr. Dawson this

morning, for advice covering the letter addressed to you by Adjutant General Charles P. Lovell, *in re*: certain funds withdrawn from deposit by Adjutant General Sidney J. Catts, Jr., I beg to advise that, in my opinion, Adjutant General Catts did not have authority to withdraw the funds mentioned in said letter and apply the same to the payment of his salary, and that the said funds should be immediately returned to the present Adjutant General and by him kept inviolate until disposition thereof is made by Act of the Legislature.

Yours very truly,

RIVERS BUFORD,

Attorney General.

WITNESSES—PREPAYMENT.

Tallahassee, Fla., January 27, 1921.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Sir:

In reply to your inquiry as to what action, if any, the Governor may properly take under the circumstances stated in the following telegram addressed to you by the Sheriff of Volusia County:

“In matter of Hames murder Daytona Beach, Florida, got one of the right men in jail. Important Witnesses in Georgia telegraph that they are unable to pay fare—willing to come—ask ticket be sent them. Advise what to do? Can you furnish help to prosecute alone. I am helpless.”

I beg to advise that, in my opinion, the advancement of

compensation to witnesses for the State in criminal cases, whether by way of transportation or otherwise, is not authorized by law; nor is there any public fund out of which such advance payment could be made. But if such non-resident witnesses should attend court in this State upon request of the State Attorney their per diem and mileage would be paid by the County Commissioners.

Yours very truly,

RIVERS BUFORD,
Attorney General.

ADJUTANT GENERAL—FUNDS COLLECTED.

Tallahassee, Fla., January 28th, 1921.

Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.

Dear Governor:

In re: Claim of Military Department of the State of Florida vs. Sidney J. Catts, Jr.

Complying with your request of yesterday, I have carefully read the letter of Hon. Sidney J. Catts, Jr., under date of January 22nd, 1921, and note that he requests that you re-submit the question to the Attorney General. I assure you that I would be very glad to render Mr. Catts any assistance possible, but I am bound to render my opinion according to what I conceive the law to be and I cannot see that the fact, if it be a fact, that former Adjutants General have, from the fund under consideration, made certain advancements, changes the legal status of the matter except that this fact would have considerable weight in determining the good faith of the transaction.

The salaries of all State officials may properly be paid only by the State Treasurer upon warrant drawn by the Comptroller and in my opinion, no state official would have the legal right to appropriate any money that happened to be in his possession to the payment of his salary nor to advance the same to himself upon his prospective salary.

There is no question but that the Legislature should appropriate sufficient money to pay the salary provided by law as compensation for each officer and I am quite sure that the error in this case occurred by reason of reference by whoever prepared the bill to the General Statutes of Florida. I observe that Section 733 of the General Statutes of Florida fixed the Adjutant General's salary at \$2000.00, which provision was subsequently amended, raising the salary to \$3000.00 and this amendment was evidently overlooked.

In my opinion, this money should be returned to the fund from which it was withdrawn and the deficiency in salary should be appropriated by the next Legislature.

Yours very truly,

RIVERS BUFORD,

Attorney General.

GAME WARDEN—APPOINTMENT AND FEES.

Tallahassee, Fla., February 9th, 1921.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Sir:

The letter addressed to you by Hon. Ellis C. May under date of February 8th has just been handed me by Hon.

Marion L. Dawson, with the request that I advise you upon the subject therein inquired about.

It is my opinion that the Sheriff of a county under the existing law is not *Ex Officio* Game Warden. Nevertheless, it is the duty of the Sheriff to enforce the game law just as it is his duty to enforce the other penal statutes of the State.

The law authorizing the appointment of Game Wardens and defining their duties and providing compensation now in force in this State will be found in Section 1793 to 1799 Revised General Statutes of Florida, and no other fees except the salary as provided in Section 1795 and fees provided in Section 1799 should be paid to Game Wardens. You will notice by reference to Section 1793 that it is the duty of the Governor, upon the recommendation of the Board of County Commissioners, to appoint a Game Warden in each county.

The general duties of the Sheriffs are prescribed in Section 1804 to 1812 of the Revised General Statutes, and in none of these Sections is it provided that he shall be *Ex Officio* Game Warden.

You will observe that the Game Warden and his deputies shall be allowed for making arrests for violation of the game law, the same mileage as conveying prisoners, except that no mileage shall be allowed in case of acquittal. Each County Game Warden shall be also allowed and paid an amount equal to one-third of all fines and penalties collected in the county imposed for violations of the game law in cases in which he and his deputies furnish evidence upon which conviction is had, which sums of money shall be paid by the Board of County Commissioners out of the Fine and Forfeiture Fund.

The above stated provision must be considered in connection with Section 5798 of Revised General Statutes, which is, "all monies collected from fines, penalties of forfeitures under this law shall go into the Fine and Forfeiture Fund of the county where such convictions are had,

and the County Commissioners of such county shall pay to the witnesses furnishing the evidence in such convictions an amount equal to one-half of such fines or penalties, which shall be paid by warrant upon the Fine and Forfeiture Fund of such county."

Therefore, you will observe that under the law the County Judge should pay no money, either to the Game Warden or to the Sheriff, but all fines and forfeitures should be paid into the Fine and Forfeiture Fund. Under the old law the Game Warden received a part of the money derived from licenses. This provision, however, no longer obtains.

It is my opinion that in the enforcement of this branch of the law, the Sheriff is entitled to the same fees as he is for like services as Sheriff, and that the provision of Section 1799, which provides that the Game Warden shall not be paid mileage in case of acquittal, does not apply to Sheriffs serving processes in discharge of his duty as Sheriff, neither would the other provision of this Section, to-wit: "Each County Game Warden shall be allowed and paid an amount equal to one-third of all fines and penalties collected in the county imposed for violation of the game law in the cases in which he or his deputies furnish the evidence upon which conviction is had," apply to Sheriffs, but if the Sheriff as an individual furnished the evidence upon which the conviction is had, he would be entitled to receive the compensation provided for in Section 5798, because the provision of this Section applies to any person who furnishes the evidence, except the Game Warden and his deputies, and if more than one person furnishes the evidence for the conviction, the amount of such compensation should be pro-rated equally among the persons furnishing such evidence, and this provision applies to all persons, except the Game Warden and his deputies, in which case the compensation allowed is one-third instead of one-half.

Of course, I do not know what was decided by Judge

Bullock in his order of April 15, 1918, as I have only a copy of the order before me, and it does not set forth the origin of the money therein referred to.

Yours very truly,

RIVERS BUFORD,
Attorney General.

REQUISITION—AFFIDAVIT BEFORE
MAGISTRATE

Tallahassee, Fla., February 14, 1921.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Sir:

Replying to your inquiry as to the sufficiency of the requisition issued by the Governor of Texas for the apprehension of one Leo Haynes, and his delivery to the agent of that State, I beg to advise as follows:

Section 5278 of Revised Statutes of the United States, relating to interstate rendition of fugitives from justice, requires that a demand for such apprehension and delivery shall be accompanied by a "copy of an indictment *or an affidavit made before a magistrate,*" charging the person demanded with having committed treason, felony or other crime.

The requirement that the affidavit shall have been made before a magistrate is peremptory, and is not complied with by the affidavit produced with the requisition above mentioned, since it was made before the County Attorney. This affidavit is also insufficient in that it does not directly charge the alleged fugitive with having committed


a crime, but merely states that the affiant "has good reasons to believe and does believe" that he had done so.

Because of these deficiencies in the affidavit, I am of the opinion that the application should be denied, but without prejudice to its renewal upon production of a proper affidavit in accordance with the provisions of the statute cited.

Yours very truly,
RIVERS BUFORD,
Attorney General.

REQUISITION—AFFIDAVIT—SUFFICIENCY.

Tallahassee, Fla., February 15, 1921.


Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.

Dear Sir:

I return herewith the application for the issuance of a requisition for the apprehension and return to this State of one Frank V. Baker, and advise that the application should be denied.

The affidavit upon which such application is based does not charge any offense under the laws of this State. It merely charges that Frank V. Baker "did desert the said Ada Baker and her children and was with-holding from them visible means of support." It is not alleged that he deserted *his wife* and *his children*, or that Ada Baker is his wife or that her children are his children. It is no crime in this State for a man to desert the wife and children of another.

Yours very truly,
RIVERS BUFORD,
Attorney General.

MARKS AND BRANDS—INSPECTORS—AP-
POINTMENT

Tallahassee, Fla., February 22, 1921.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Sir:

Complying with the request of your Secretary, Hon. M. L. Dawson, for a construction of Section 4873, Revised General Statutes of Florida, I beg to advise that Sections 4873 and 4876 must be construed together, and when so construed the necessary conclusion is, that the Governor shall appoint Inspectors of Marks and Brands upon the recommendation of the County Commissioners.

"The petition of a majority of the stock men of such cattle district, or election precinct," is not a petition to be acted upon by the Governor, but is to be acted upon by the County Commissioners, by such Board recommending for appointment an inspector or inspectors upon the presentation of such petition. It becomes the duty of the Board of County Commissioners to recommend such appointment under two conditions, one is, where it appears to the County Commissioners to be advisable and under this provision the Board of County Commissioners may act upon their own initiative, the other is, in case the County Commissioners do not act upon their own initiative, then they may be required to act upon the petition above mentioned.

Under Section 4876, it becomes the duty of the Board of County Commissioners in any County of this State, where there are five thousand or more head of cattle as shown by the last State Census, to lay out their respective counties into districts to be known as "Cattle Districts"

and to recommend for appointment inspectors for such districts.

I, therefore, do not think that the law authorizes the Governor to appoint one inspector upon the recommendation of the Board of County Commissioners and another upon the petition of citizens.

Yours very truly,

RIVERS BUFORD,

Attorney General.

GOVERNOR—USE OF NAME IN SUIT AGAINST
SHERIFF.

Tallahassee, Fla., February 22, 1921.

Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.

Dear Sir:

Complying with the request of your Secretary, Hon. M. L. Dawson, to advise you upon the matter referred to in the letter of Tilden & McGuire, under date of February 17th, 1921, I beg to advise:

It is my opinion that any person who deems himself injured by the unlawful act of a Sheriff, or one of his Deputies, by acting in the official capacity as Sheriff or Deputy Sheriff, should always have the right to procure the remedy for his alleged injury in a court of competent jurisdiction.

Therefore, I think that it would be entirely proper for you to authorize Messrs. Tilden & McGuire to use your name, as Governor of the State of Florida, in bringing a suit for the use and benefit of Clay Binion and R. A. Me-

Tier against Sheriff Karel and upon his bond in the Circuit Court of Orange County, Fla.

This does not mean that you would be taking a partisan position in this matter, but by granting such permit you would only make it possible for the rights and wrongs of the participating parties to be properly adjudicated, and to consent thereto should not be construed as approving the course sought to be pursued by either party, your name simply being the vehicle upon which a person wronged by the conduct of a Sheriff acting in his official capacity may enter the judicial forum.

Yours very truly,

RIVERS BUFORD,

Attorney General.

JUSTICE OF PEACE—TERM OF OFFICE.

Tallahassee, Fla., March 15, 1921.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Sir:

Your Secretary, Hon. Marion L. Dawson, has referred to me the letter hereto attached, requesting that I give you my opinion as to the matter therein contained.

Under the facts stated, Capt. F. W. Bruce continues to be Justice of the Peace of his District until he resigns, or is removed, or his successor is elected or appointed and qualified.

I suggest, however, that it is rather a loose practice to allow these officials to hold over indefinitely, and deem it advisable for you either to re-appoint Capt. F. W. Bruce,

or appoint some other suitable person in that District to occupy the office.

Yours very truly,
RIVERS BUFORD,
Attorney General.

CORPORATIONS—CHURCH CHARTER

Tallahassee, Fla., March 15, 1921.

Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.

Dear Sir:

I herewith hand you the proposed Charter of Reinland Mennonite Church of Florida, which you transmitted to me with the request that I advise you whether or not it contained provisions contravening our law.

It is my opinion that Paragraph (e) of Article II is not in harmony with the law of the State of Florida; that it is not in harmony with our theory of government and controverts our policy of separation of Church and State.

To be more explicit, the provisions of this Paragraph are not in accord with Sections 691 to 693, Revised General Statutes of Florida.

The provisions are not in accord with Chapter 7808, Acts of 1919. The provisions of this paragraph are in conflict with Section 6 of the Bill of Rights of the Constitution of the State of Florida.

The provisions of this paragraph are in conflict with Section 12 of the Bill of Rights of the Constitution of the State of Florida.

And while no law prohibits such course, it is against

public policy to authorize the conducting of any school wherein the English language is not to be taught in this State, or in any State of the United States.

In the last analysis, however, such a Charter should not be granted because it seeks to confer special privileges and immunities to and upon the members of a particular Church, and thereby conflicts with Section 6 of the Bill of Rights of the Constitution of the State of Florida, as above referred to.

Yours very truly,

RIVERS BUFORD,

Attorney General.

LEGISLATOR—CANNOT CONTINUE AS
PROBATION OFFICER.

Tallahassee, Fla., April 25, 1921.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of April 23rd, beg to say:

In my opinion it is not legal for Mr. Peiper to continue as Probation Officer of St. Johns County, while holding the position as member of the legislature.

I had thus advised Mr. Peiper when he asked my opinion about the matter a few days ago. I understood from him that he intended to immediately send you his resignation.

Yours very truly,

RIVERS BUFORD,

Attorney General.

BOND—SURETY—APPROVAL.

Tallahassee, Fla., April 25, 1921.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Sir:

I have examined the bond of The E. O. Painter Printing Company hereto attached, and find the same to be in proper form and properly executed.

This bond should be deposited with the State Treasurer, whereupon he will as per resolution of the Board of Commissioners of State Institutions pay over the balance of the contract price due The E. O. Painter Printing Company for printing and binding the Revised General Statutes of Florida, 1920.

Yours very truly,

RIVERS BUFORD,

Attorney General.

CORPORATION—CHURCH CHARTER.

Tallahassee, Fla., April 28, 1921.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Sir:

I return herewith the proposed charter of "Reinland Mennonite Church of Florida" handed me with request for my opinion as to whether or not Letters patent upon it could be properly issued.

Section 4052 of Revised General Statutes of Florida provides that, after certain preliminary steps have been complied with, the proposed charter "shall be produced to the Governor, who shall examine the same; and if he finds it to be in proper form, and for an object authorized by law, Letters Patent shall issue incorporating the subscribers, their associates and successors," etc.

In my opinion said proposed charter is not in proper form nor for an object authorized by law. In point of form it is not in accord with the provisions of the Statutes in the following particulars:

1. It seeks to incorporate a religious society by a method not authorized by law; Section 4499 *et seq.* of Revised General Statutes provides for the incorporation of such societies by application to and order by the Circuit Court, requires not less than five persons to form such corporate association, and imposes upon it various limitations not imposed upon business corporations, or, as termed in the statute, corporations for profit. The requirements of the statute providing for the incorporation of religious societies are not met by the said proposed charter in any particular. Nor is it in proper form as to a corporation for profit, or, in other words, a business corporation. Section 4052 of Revised General Statutes provides that Letters Patent may issue "incorporating the subscribers, their associates and successors, into a body politic and corporate," etc., while the proposed charter grants the same power and authority to the directors, stockholders, and trustees of the corporation, and their successors and assigns, and to the assigns of the corporation, as to the corporation itself and its successors. Aside from other questions involved in this departure from the statutory provisions, there is a wide difference between successors and assigns.

Some, at least, of the provisions of paragraph (e) of Article II of the proposed charter are not for objects "authorized by law;" the building of roads, bridges and highways is a governmental function not delegable to a pri-

vate corporation; nor is the deprivation of a citizen or resident of this State of the right to send his children to its public schools, or to private schools other than those controlled by the church corporation under pain of expulsion from the church and forfeiture of his property an object authorized by law. There are other features of this paragraph which contain the heart and ultimate and essential purpose of the incorporation sought, that are not in harmony with the governmental policy of this State, though not so far expressly prohibited by statute.

But without reference to any question of the form of this proposed charter, or of any particular provisions thereof, I am of the opinion that, considered as a whole, it is for an object not authorized by law, in that it is sought to incorporate a religious society as a business corporation, a corporation for profit.

The Legislature has provided (Sec. 4499, *et seq.*, Revised General Statutes) for the incorporation of religious societies in a certain way, with certain powers, and subject to certain limitations, as corporations not for profit; and has provided (Sec. 4052, *et seq.*, Revised General Statutes) for the incorporation of business corporations, or corporations for profit, in another manner, with essentially different powers, and subject to different limitations. These statutes clearly express the legislative will and policy of this State to be that a religious society should not be incorporated as a corporation for profit; that a corporation organized for profit should not function in matters of religion, and that the rights, privileges and immunities granted to these two classes of corporations separately should not be combined in one corporation, and this expression of legislative will is in accord with the Constitution and public policy of the State.

Yours very truly,

RIVERS BUFORD,

Attorney General.

BONDS—SURETY—APPROVAL.

Tallahassee, Fla., April 29, 1921.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Sir:

I herewith return to you the bond offered by Joseph Needham, trading as Needham Brothers, and beg to advise that I cannot approve the same because:

First. The rider providing for the additional thousand dollars is not executed by the principal.

Second. I do not approve the proviso, "that no liability shall attach to the surety hereunder unless in the event of any default on the part of the principal in the performance of any of the terms, covenants or conditions of the said contract, the obligee shall promptly and in any event not later than 30 days after knowledge of such default deliver to the surety at its office in the City of Baltimore written notice thereof," etc.

Third. The bond does not comply with the provisions of Section 3533, Revised General Statutes of Florida, which section requires that the bond shall contain a provision, "that the contractor shall promptly make payments to all persons supplying him or them labor and material in the prosecution of the work provided for in such contract," etc.

Yours very truly,

RIVERS BUFORD,

Attorney General.

REWARDS—PAYMENT BY GOVERNOR.

Tallahassee, Fla., April 29, 1921.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Sir:

Replying to your request that I advise you what is proper to be done with the application of W. D. Cobb, Sheriff of Hernando County, Florida, for reward for the apprehension and conviction of one Hop Smith, beg to say:

Prior to the Legislature of 1919, a fund was provided from which the Governor could pay rewards for the apprehension and arrest of fugitives from justice. No appropriation, however, was made at the last session of the Legislature for this purpose, therefore, no fund has been available.

When such fund is available the Governor has authority to offer and pay such rewards.

On the 29th day of June, 1920, Governor Catts offered a reward of \$150.00 for the arrest and conviction of the unknown party or parties that were guilty of the murder of Joe McKinney in Hernando County.

Sheriff Cobb's letter to you, and Exhibits attached thereto, explains what followed.

As soon as you have any fund available from which to pay this reward, it is my opinion that it should be paid.

The payment thereof is the obligation of the State of Florida, lawfully contracted by the Governor, and is not the obligation of Mr. Catts.

Yours very truly,

RIVERS BUFORD,
Attorney General.

REQUISITION—APPROVAL.

Tallahassee, Fla., May 27, 1921.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Sir:

In re: Requisition for Warrant of Extradition for Robert C. Howard.

Pursuant to your request as presented to me by Hon. Marion L. Dawson, under date of May 18th, and pursuant to notice to all parties interested, I have this day conducted a hearing in my office based upon this application, and the protests filed thereto.

I find from the evidence that Robert C. Howard was convicted in the Juvenile Court of Montgomery County, Alabama, on the 31st day of March, A. D. 1921, of the offense of non-support, and was sentenced to pay a fine of \$100.00 and to serve a term of twelve months at hard labor in said county; that the court under authority of the law of Alabama then and there entered an order suspending the sentence upon the condition that the defendant pay for the support of his children the sum of \$200.00 per month for twelve months from that date; that the defendant entered into a bond to pay the said \$200.00 per month commencing on the first day of April, A. D. 1921; that to procure the bond he agreed to pay to one G. J. Thrasher the sum of \$200.00 and to deposit with the said G. J. Thrasher \$100.00 per month to secure the said Thrasher against any loss which he might sustain upon the said bond.

I also find from the evidence that Robert C. Howard paid the said G. J. Thrasher the said sum of \$200.00 for executing the said bond on the first day of April, and de-

posited with him on the same day \$100.00 as security against any loss the said Thrasher might sustain, and that thereafter on the 23rd day of April he paid the said G. J. Thrasher an additional \$100.00; that G. J. Thrasher paid \$200.00 during the month of April to the Juvenile Court for the said Robert C. Howard which came out of the money that Howard had agreed to pay to the said Thrasher; that on the 5th day of May the court in due course made an order adjudging that the said defendant Robert C. Howard had failed to pay the sum of \$200.00 per month as required to be paid by his bond, and declaring the bond forfeited and ordered an alias to issue.

I also find from the evidence that the said Robert C. Howard had failed to pay the Juvenile Court of Montgomery County, Alabama, the sum of \$200.00 per month as required to be paid under the conditions of the said bond, and that therefore the order of forfeiture was properly made.

I also find that all the papers relative to the application for a warrant of extradition are in proper form, and return the same to you with my recommendation that the warrant be issued.

Yours very truly,
 RIVERS BUFORD,
 Attorney General.

NOTARY PUBLIC—QUALIFICATIONS.

Tallahassee, Fla., July 26, 1921.

Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.

Dear Sir:

Pursuant to the request of Hon. Marion L. Dawson,

Secretary, that I advise you as to whether or not Mr. E. H. Farman is eligible to be appointed a Notary Public under the facts stated in a letter written to you on July 23rd, by Mr. Scott Morris, I beg to say :

Under the law of the State of Florida any person over 21 years of age residing within the State of Florida, who is a citizen of the United States, and who is not debarred from holding office by the provisions of the Constitution of the State of Florida is eligible to be appointed a Notary Public. There is no allegation in the letter from Mr. Morris charging that E. H. Farman is not a resident of the State of Florida over 21 years of age, or that he is not a citizen of the United States, or that he has ever been convicted of any crime which would bar him from holding office under the Constitution of this State. Therefore, no showing has been made in this letter upon which an opinion could be based that E. H. Farman is not eligible to hold the office of Notary Public.

I herewith return the letter to you from Mr. Morris.

Yours very truly,

RIVERS BUFORD,

Attorney General.

JUVENILE COURTS—PAROLE OF PRISONERS

Tallahassee, Fla., August 8, 1921.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Sir :

In reply to your request that I advise you as to the extent of the authority of the Judge of the Juvenile Court

to parole persons who have been committed by the court to the Florida Industrial School for Boys, and to the Florida Industrial School for Girls, I beg to say:

The only cases in which the Judge of the Juvenile Court has authority to set aside, change or modify his order of commitment are those cases wherein a child less than 17 years of age is committed because of being dependent within the meaning of the law, and does not apply to cases where the child is committed because of being delinquent, or because of having violated the law.

I return enclosure herewith.

Yours very truly,

RIVERS BUFORD,
Attorney General.

BONDS—SURETY—JUDGMENT ON.

Tallahassee, Fla., September 8, 1921.

Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.

Dear Sir:

Referring to letter dated Sept. 1st, addressed to you by Judge C. B. Parkhill, I beg to say:

I very seriously doubt that you have the authority to bind the credit of the State of Florida by executing an attachment bond in an action such as is suggested by Judge Parkhill.

If I may assume so to do, I will suggest that it occurs to me that the most advisable course to be pursued would be for Judge Parkhill to proceed to obtain judgment on the bond against the sureties, and that when such judgment

is obtained, that he thereupon file a suit in Chancery with *Lis Pendens* to subject the property to which he refers to the judgment lien.

Yours very truly,

RIVERS BUFORD,

Attorney General.

FLORIDA STATE HOSPITAL—PAYMENT—
TRANSFER OF PATIENTS.

Tallahassee, Fla., September 23, 1921.

Hon. Cary A. Hardee,

Governor,

Tallahassee, Fla.

Dear Sir:

Replying to your letter of the 22nd instant, beg to advise that it will be necessary for the Florida State Hospital to bear the expense of transportation of patients being transferred from the Florida State Hospital at Chattahoochee, to the Florida Farm Colony for Epileptics and Feeble Minded at Gainesville, which expense will properly be paid from the contingent fund of the Florida State Hospital.

I herewith return to you letter from Dr. J. H. Hodges for your files.

Yours very truly,

RIVERS BUFORD,

Attorney General.

TAXATION—ASSESSMENT ROLL—EQUALIZATION

Tallahassee, Fla., September 29, 1921.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of the 22nd instant, in which you request that I advise you as to whether or not under the law of Florida, the County Commissioners of Jefferson County, Florida, were within their legal authority to equalize and adjust values at their September meeting, I beg to say:

You have been somewhat misinformed as to the facts as disclosed by the record. I had Mr. M. C. McIntosh of my office to go to Monticello, Fla., and inspect the minutes of the meetings of the Board of County Commissioners of Jefferson County, and to bring me a transcript of the record thereof, in which transcript the description and values of lands referred to were not set forth in full as they do appear on the minutes.

I find from this record that the Board of County Commissioners of Jefferson County were in session on the 6th day of July, 1921, and adjourned to meet again on the 26th day of July, 1921, for the purpose of equalizing taxes for the year 1921. That the Board of County Commissioners met with the County Tax Assessor in the Court House pursuant to notice on the 26th day of July, 1921, and proceeded to review, examine and equalize the tax roll and assessments presented by the Tax Assessor, and that they met and adjourned from day to day until and including July 28th; having made during the three days session reductions in 33 items of the assessment, and having made raises in 63 items of the assessment, at the end

of which minutes the following entry appears: "There being no further business, the Board then adjourned to meet again in regular session August 3, 1921."

The record then shows August 3, 1921, meeting, "The minutes of July 6, 1921, read and approved. After attending to regular business such as approving bills, the Board then adjourned to meet again on Wednesday, August 10th, to make up budget for ensuing fiscal year."

The record then shows that the Board met August 10th, 1921, with all Commissioners present, made up budget and then: "On motion made and carried that Jefferson County Products Company assessment for 1921 be reduced from \$4,000.00 to \$600.00."

After the meeting in July, the Board published the notice required under Section 723, Revised General Statutes of Florida, describing the lands the assessment value of which had been raised by the Board of County Commissioners at the July meeting, and stating therein that a statutory meeting would be held by the Board of County Commissioners at the Court House, at Monticello, Florida, on the first Monday in September for the purpose of hearing complaints from the owners or agents of any real estate or personal property, the value of which had been fixed by the County Tax Assessor, or changed by the Board of County Commissioners. On Monday, September 5, 1921, pursuant to such notice, the County Commissioners met with all members present and stated the purpose of the meeting. The record shows that several persons were heard to complain of the assessments and values which had been fixed, and thereafter, the Board decided to re-convene on September 6th, 1921, 'and take up and review the entire assessment roll for the year 1921, taking up separately each item of property therein with a view of perfecting an equilization of said roll.' The record shows that the Board met on September 6th, and made 306 reductions, aggregating \$151,015.00, and adjourned until the next morning when they met again and proceeding with the tax

roll made 350 reductions, aggregating \$187,360.00, and adjourned until the following morning, September 8th, when they met again and taking up the tax roll made 138 reductions, aggregating \$52,460.00. My copy shows no record of adjournment, but shows the following entry: "The Board having completed the work of reviewing and equalizing the tax roll, on motion of Commissioner Reams, seconded by Commissioner ———, it was unanimously carried that the said tax roll for the year 1921, as presented by the County Tax Assessor, with the changes heretofore made by the Board be finally accepted."

It is my opinion that the record in this matter shows that the Tax Assessor had conscientiously performed the duties of his office, which is borne out by the record of the minutes of July 26th, July 27th and July 28th, during which time the Board of County Commissioners made comparatively few changes in the assessment roll.

It is my opinion that the Board of County Commissioners in their action upon the assessment roll on September 6th, 7th and 8th, exercised authority not contemplated by the statutes in this State, and that by their action, in effect, made a new assessment and fixed an arbitrary standard of reduction in assessed values.

The Board of County Commissioners, however, having assumed to take such action and having made the general reduction (and I submit that the record shows general reductions in that it shows 992 reductions, aggregating \$390,855.00) at their statutory meeting in September such Board is without authority in law to correct its error or right its wrong, and in support of this view, I submit the following:

The purpose of equalization is to bring the assessment of different parties to the same relative standard so that no one may be compelled to pay a disproportionate part of the taxes—Cooley on Taxation, page 421; State ex rel. vs Carr, 64 Nebr. 514; 90 N. W. 299-300.

The Board of County Commissioners simply has appel-

late jurisdiction when sitting as an equalizing board, under the statute, and can only act upon the complaint of a tax payer who feels that he has been injured.—Cooley on Tax. 2d. ed. page 420 & 747-8. This theory is borne out by more than one section of our statutes governing taxation. For instance, Section 715, Revised General Statutes, provides, that upon failure of the property holder to make return as provided, the assessment and valuation made by the assessing officer or officers shall be deemed and held to be binding upon such owner or other person or corporation interested in such property, unless complaint is made of such assessment and valuation on the day set for hearing complaints and receiving testimony as to the value of any property real or personal, as fixed by the County Tax Assessor of taxes. It will be seen also, that this return must show the true cash value of the property, and must be under oath made before the *assessor*. Sec. 716, Revised General Statutes of Florida.

Furthermore, Section 716, R. G. S., provides that if the tax payer feels aggrieved at the valuation placed upon any items of property by the County Assessor of Taxes he shall complain to the County Commissioners at their meeting in August that the valuation may be properly adjusted. Section 723, Revised General Statutes, provides, that the Assessor shall meet with the Board of County Commissioners at the Clerk's office of the respective counties for the purpose of hearing complaints and receiving testimony as to the value of any property, real or personal, as fixed by the County Assessor of Taxes, of perfecting, reviewing and equalizing the assessment and may continue in session for that purpose from day to day for one week or as long as they deem necessary. Due notice of such meeting shall be given by publication in a newspaper published in such county, or by posting notices at the Court House, if there be no newspaper published in the county, at least fifteen days before the Board will be in session for the purpose of hearing complaints and receiving testimony

as to the value of any property as fixed and assessed by the County Assessor of Taxes.

Furthermore, "the Board of County Commissioners shall meet on the first Monday of August or September, of each year, for the purpose of hearing complaints from owners or agents of any real or personal property the value of which shall have been fixed by the Assessor, or changed by them, and for that purpose the Board may sit as long as it may be necessary."

Section 725, Revised General Statutes, provides, that the Commissioners shall have full power to equalize the assessment of real estate and personal property in their respective counties, and for *that purpose* may raise or lower the values fixed by the County Assessor, on any particular piece of real estate or item or items of personal property.

In fact, the context of the statute contemplates that the County Commissioners shall have the power only to hear complaints and receive testimony as to the valuation of property as fixed by the Assessor that the valuation may be equal and uniform, and only for that purpose may they raise or lower the value as fixed by the Assessor on any particular piece of real estate or any item or items of personal property.

It is absolutely essential to the validity of a tax levy that the assessment be made by the officer authorized by law to make it,—*Tampa vs. Kunits*, 49 Fla. 696 (Text); 1 Blackwell Tax Titles, Sec. 168; Black Tax Titles, Sec. 93; unless statute expressly gives the Board power to act as original assessing body, they can not make an assessment *de novo*; Black Tax Titles, Sec. 13; *Lowell vs. County Commissioners* (Mass.) 76 N. E. 8.

The County Commissioners have no authority except such as is expressly or by necessary implication, conferred upon them. They are confined in their performance to a reasonable strict observance of statutory requirements. They can not in the absence of statutory authority make

original assessments, change the values or otherwise correct individual assessments. 27 Ency. Law 711-12.

Mr. Cooley on Taxation, Second Edition, page 418, says: "Where a statutory board is provided for, which is to review the work of the Assessor, the purpose may be either to examine the individual assessments with a view to the correction of errors and inequalities, or to examine the assessment as a whole with a view to determining whether they are relatively equal as between different parts of the district within which a tax is to be laid, and if not to make them so by increasing those which are too low and diminishing those which are too high. This process is called equalization and is resorted to in order to make the valuation of counties proportionate when a state tax is to be levied, and those of townships and cities proportionate when a county tax is to be levied."

Again, page 419, "The valuations by the assessors are conclusive upon Board to review, except as the statute may otherwise provide, and they can not therefore release a tax or its lien or change individual assessments when not expressly empowered to do so. If the Board is authorized to equalize and also to change the assessments, its powers in respect to one of these subjects is not exhausted by hearing and determining on the other only, and on the other hand if it has the authority over but one, it does not lose it by assuming to act upon the other."

Under our statutes, I find no power conferred upon the County Commissioners to change assessments, except that it be for the purpose of raising or lowering the value fixed by the County Assessor of Taxes on any particular piece of real estate or item of personal property, Section 725, Revised General Statutes, and then only for the purpose of equalizing the assessment. The last citation above from Cooley is submitted upon the proposition that the power of the Board to equalize does not embrace or carry with it the power to *change* the assessment.

Again, Cooley, page 420, "The courts have been particu-

larly careful to see that revisory tribunals did not change assessments to the prejudice of tax payers who under the circumstances had no reason to look for, or anticipate any such change. If the tax payer himself does not appeal he has a right to suppose that the assessment against him will be allowed to stand as made."

Our Supreme Court in the case of *Sparkman vs. the State of Florida*, reported in 71 Fla., page 210, holds:

"The county commissioners have no general power in making tax assessments but only such special and limited power as is specifically conferred by statutes to secure equalization of tax values. When that power as specially conferred is exercised and final adjournment is taken, their special power as a Board of Equalization ceases particularly when as in this case the power is limited and particular and in no sense general as are other powers conferred upon the Commissioners with reference to general county matters."

In the text of the decision on page 233, the court says:

"The rights acquired by the relator with reference to the assessment against him by virtue of the previous action duly taken and not set aside by *competent authority* can not be taken away by subsequent action of the Board that is not provided for by law, since that would be a denial of due process."

Therefore, we are forced under this decision to the conclusion that the Board of County Commissioners when they have assumed to act and have concluded their action sitting as a Board of Equalizers, have no authority whatever to rescind such action however unfair or unjust it may have been until that action has been set aside by "competent authority."

"If a thing is limited to be done in a particular form or manner it excludes every other mode.—*Mercantile Bank vs. New York City*, 121 U. S. 138; 30 L. ed. 895; *Hepburn vs. School Dist.* 90 U. S. 480; 23 L. ed. 112."

It would indeed be a dangerous construction were it as-

sumed that our statutes authorized Boards of County Commissioners when sitting as Boards of Equalizers to arbitrarily and upon their mere caprice decrease the assessed values of property for the purpose of favoring the people of the county in which they sit at the expense of the balance of the citizenship of the State, and would in effect mean that they possess power without prescribed limitations, and could use the same for the purpose of gross fraud and injustice.

In conclusion sir, may I say that litigation appears to be the only fair road out of this difficulty, and that there is no necessity for such litigation to be of long duration.

It is my opinion that the records are in such condition that the issues in question may be quickly and definitely adjudicated upon the application and issuance of a writ of certiorari, and indeed the record in this case is so full and complete that a judicial determination of the questions involved will prove extremely valuable as guide posts of the law for those officers performing like duties in the future.

Yours very truly,

RIVERS BUFORD,

Attorney General.

CORPORATIONS—LETTERS PATENT TO AUTOMOBILE INSURANCE COMPANY.

Tallahassee, Fla., October 27, 1921.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your letter of this date requesting me to advise you whether or not you will be justified in re-

fusing to issue Letters Patent to Florida State Mutual Automobile Insurance Company in face of a protest filed by one H. A. Hall and upon consideration of all of the facts presented by the application.

I beg to advise that the proposed incorporators seek to obtain Letters Patent under the provisions of Article 8, embracing Sections 4309 to 4326, inclusive, Revised General Statutes. Letters Patent are not authorized to be issued under the provisions of this Article to a less number than 20 persons. It appears that there are the signatures of just 20 persons to the application, and therefore, if the name of H. A. Hall is eliminated, the statutory number will not remain. Should another name be submitted in lieu of the name of H. A. Hall, then the application would in this fail to conform to the advertisement, which has been made of the intention to apply for Letters Patent.

The present status of the matter is that 20 persons have filed this application for Letters Patent, but before the date fixed for the presentation of the application to the Governor, one of these 20 persons has by direct communication with the Governor, withdrawn his request for the Letters Patent to issue and has demanded that his name be stricken from the list of incorporators. Whether or not the action of the person so withdrawing his name is justified or not is immaterial. If any responsibility has attached to him by reason of having signed the application, he cannot evade that responsibility which may accrue prior to the granting of the application, but his status would be changed when Letters Patent are issued, and he may avoid that change in the status of his responsibility by ceasing to become one of the applicants. This he has done.

In consideration of all of the above facts, it is my opinion that you will be justified in refusing to grant Letters Patent to this corporation.

I may say further, that it is my opinion that associations of this character are not properly incorporated by Letters Patent issuing from the Governor, and that the

statutes provide an entirely different procedure for the creation of such corporation.

Yours very truly,
RIVERS BUFORD,
Attorney General.

CORPORATION—SIMILARITY OF NAMES.

Tallahassee, Fla., November 21, 1921.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your inquiry under date of the 18th instant, as follows:

“Will you be good enough to advise me if there is any law which would give me authority to refuse to sign articles of incorporation in those cases where the name of the incorporated company is very similar to name of company heretofore incorporated by the State.”

In reply to this inquiry, I beg to advise that except in case of Building and Loan Associations the statutes of this State do not prohibit the granting of Letters Patent to a proposed corporation because the name thereof is similar to an existing corporation, the only limitation as to the authority of the Governor in such matters being that before issuing Letters Patent he shall find the proposed charter “to be in proper form, and for an object authorized by law, and that due notice has been given.”

While the law does not prohibit the use by one domestic corporation of a name similar to that of an existing one,

or even identical therewith, yet it has been held that "approval of the proposed articles of incorporation will generally be withheld if the name conflicts with that of an existing corporation. (Cook on Corporations, Section 15, note.)

The statutes appear to place such matters in the discretion of the Governor, and in my opinion you are authorized to refuse to issue Letters Patent where the name of the proposed corporation is so nearly similar to that of an existing one as to necessarily lead to confusing the one with the other; however, I do not think there is such similarity in the names you mention.

Yours very truly,

RIVERS BUFORD,

Attorney General.

RAILROADS—POLICE OFFICERS—REMOVAL
BY GOVERNOR.

Tallahassee, Fla., November 26, 1921.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Sir:

Replying to your request that I advise you whether or not you have the power to revoke the commission of one P. K. Winter, appointed by you as Sergeant of Police, Atlantic Coast Line Railroad, Jacksonville, Florida, I beg to say:

Your authority in this matter is derived from the provisions of Chapter 8539, Acts of 1921, and Section 5 of this Chapter provides that such officer shall be removed

by the Governor at any time "in the manner and for the causes" provided by law. No special provision is contained in Chapter 8539, Acts of 1921, prescribing conditions upon which removal is authorized other than is stated in Section 5. Therefore, you could revoke the commission and remove such officer under such conditions as would authorize the removal of any other appointive officer.

Yours very truly,

RIVERS BUFORD,

Attorney General.

JUSTICE OF PEACE—DISTRICTS IN COUNTY.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of December 14th, with which you enclose a letter from Mr. John H. Carter, of Marianna, Fla., and a copy of a Resolution adopted by the Board of County Commissioners of Jackson County, Fla., in reference to Justice of the Peace Districts in and for said county, I beg to say:

The question of eliminating two of the Justice of the Peace Districts was taken up with this office by the County Attorney during the spring of this year, and after the Attorney General and the County Attorney had arrived at an agreement as to the manner in which such re-districting could be accomplished the Board of County Commissioners passed a resolution re-districting the county and creating only two Justice of the Peace Districts within the county to be known as District No. 1 and District No. 2. It was provided that as the office of Justice of the Peace

became vacant in each of the then existing Justice of the Peace Districts that such district should thereupon be abolished and become a part of one of the newly created districts.

Whether or not this action was wise or would result in general benefit to the people of the county was in no wise a question for the decision of this office, but the responsibility therefor rested entirely upon the County Commissioners of Jackson County. The County Commissioners of Jackson County assumed this responsibility and it is my opinion that the action of the Board in so re-districting the county is valid and binding.

Yours very truly,

RIVERS BUFORD,

Attorney General.

GOVERNOR—CONTINGENT FUND.

Tallahassee, Fla., December 20, 1921.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of December 14th requesting me to advise you whether or not it would be proper for you to pay from your Contingent Fund, the sum of \$300.00 to Mr. George W. Bassett, Jr., as assistant to the State's Attorney, or acting State's Attorney, during the Fall Term of the Circuit Court of St. Johns County, and with which letter you enclose a letter from Judge Gibbs and also a letter from Mr. Frank Wideman, which I herewith return to you, I beg to say:

It is my opinion that you are not authorized to pay the bill above referred to from the Governor's Contingent Fund.

I think the matter is controlled entirely by the provisions of Sections 3020 and 3021, Revised General Statutes, both of which sections contemplate that the State's Attorney shall pay the compensation which may accrue in favor of the assistant.

Yours very truly,

RIVERS BUFORD,

Attorney General.

REQUISITION—REQUIREMENTS.

Tallahassee, Fla., December 21, 1921.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Sir:

In re: Requisition for Folsom B. Taylor.

The application for requisition for the extradition of Folsom B. Taylor and the papers accompanying same appear to be sufficient in form and substance to authorize the issuance of the requisition.

However, owing to the regulations of many of the states it is advisable that the application, certified copy of indictment or information, warrant or *capias*, etc., should be in duplicate. Whether or not this is required by the laws of New Jersey, I am unable to say, but compliance therewith might possibly avoid delay and consequent expense.

Since the alleged fugitive is in the military service of

the United States, it will be necessary, after issuance of warrant by the Governor of New Jersey, to make application to the Commanding Officer at the camp where the party is stationed for his delivery to the civil authorities. (Section 2308A, Article 74, United States Compiled Statutes, 1916.)

I presume the proper procedure would be, first to obtain the warrant from the Governor of New Jersey upon your requisition, then for the Sheriff or other proper officer of that State to make application to the military authorities for delivery of this fugitive to him to be delivered by him to the agent of this State.

Of course, the above method of procedure after seeing the warrant of extradition is somewhat conjectural, but I apprehend that no difficulty will be met with in complying with the formal regulations.

Yours very truly,

RIVERS BUFORD,

Attorney General.

STATE ATTORNEY—EXPENSES.

Tallahassee, Fla., January 2, 1922.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Governor:

I have considered the letter addressed to you under date of December 24, by Hon. Joseph H. Jones, together with enclosures attached.

Under the conditions stated in the above mentioned letter, Mr. Jones would be entitled to his actual expenses in-

curred while acting as State's Attorney in the Circuit other than his own Circuit.

It has been customary for the State's Attorneys in such cases to render a certified itemized account of their expenses, which account is submitted to the Governor and upon his approval is paid by the Comptroller's warrant.

You will find that the former Attorney General, under date of December 17, 1920, advised the Comptroller that a State's Attorney was entitled to receive his actual expenses in this particular case. See Attorney General's Biennial Report 1919-1920, page 211.

Yours very truly,

RIVERS BUFORD,

Attorney General.

FLORIDA INDUSTRIAL SCHOOL FOR BOYS—FOR GIRLS—COMMITMENTS.

Tallahassee, Fla., January 9, 1922.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Sir:

Replying to your request, I beg to advise that under Section 12 of Chapter 7808, Acts of 1919, a County Judge or the Judge of any other competent court under certain conditions may impose as a penalty upon a boy or girl a sentence, if a boy, to the Florida Industrial School for Boys, and if a girl, to the State Industrial School for Girls, to serve therein for the remainder of the current school term.

It is my opinion that neither the Board of Commis-

sioners of State Institutions nor the Superintendent of either of the above named institutions would have the legal right to decline to receive a child so committed into such institution upon the ground that the sentence is for less than one year.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SUPERVISOR OF REGISTRATION—APPOINTMENT—TERM.

Tallahassee, Fla., January 9, 1922.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Sir:

Replying to your request of January 7, I beg to advise that the office of County Supervisor of Registration is an appointive office for the term of two years. It has been customary for the Supervisor of Registration to be nominated in the Primary.

Yours very truly,

RIVERS BUFORD,

Attorney General.

DEATH WARRANT—RECORD REQUIRED.

Tallahassee, Fla., February 2, 1922.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Sir:

In the matter of the application for Death Warrant, which is herewith returned, I beg to advise that the purported copy of the record of conviction and sentence is insufficient to authorize you to issue such warrant.

Section 6123 of Revised General Statutes requires the production to the Governor of "a certified copy of the whole record of the conviction and sentence."

The "whole record" includes the indictment, the arraignment, and the plea, as well as the verdict and sentence or judgment.

The papers presented to you should be supplemented by a *certified copy* of the indictment, and of the minute record of the arraignment and plea. These, together with the papers herewith returned, would constitute the required copy of entire record, which would authorize you to issue the Death Warrant requested.

Yours very truly,

RIVERS BUFORD,

Attorney General.

FLORIDA INDUSTRIAL SCHOOL FOR BOYS—
COMMITMENT AND DISCHARGE.

Tallahassee, Fla., April 13, 1922

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Sir:

In re: James Soper, a delinquent child committed to the Florida Industrial School for Boys, I beg to say:

I have considered the copy of commitment presented by the Superintendent, Hon. M. S. Knight, and it is my opinion that the words in the commitment, "to be cared for until the further order of this court" have no effect because in such cases the court is not authorized to enter such a judgment or commitment. Section 2321, Revised General Statutes, defines the terms used in the statute of this State "dependent child," "delinquent child" and other phrases, and by referring to this Section, it will be observed that the words, "dependent child" shall mean any child, who for any reason is destitute, or homeless, or abandoned, or dependant upon the public for support, etc. While the words, "delinquent child" are held to include any child less than seventeen years of age, who violates any law of the State, or any City or Town Ordinance, or who is incorrigible, or who is a persistent truant from school, etc.

Section 2331, Revised General Statutes, authorizes Judges of Juvenile Courts when a child is found to be DEPENDENT within the meaning of the Chapter, to make an order committing the child to the care of some suitable State or County Reformatory or Institution, and provides that the Judge may thereafter set aside or modify such order of commitment in his discretion, but this Sec-

tion does not apply in the case where a child is committed as a *delinquent child* as was the case with James Soper.

It is my opinion that this boy may only be discharged before reaching his majority by order of the Board of Commissioners of State Institutions or by the Board of Pardons, and that the order of the Juvenile Court Judge, under date of April 5th, is without authority of law. Therefore, it would not be proper for the Superintendent of the Florida Industrial School for Boys to discharge a boy committed as a *delinquent* upon such an order.

Yours very truly,

RIVERS BUFORD,
Attorney General.

RAILROADS—ASSESSMENTS.

Tallahassee, Fla., June 23, 1922.

Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.

Dear Sir:

I herewith return to you the notice of appeal presented by Col. W. E. Kay and Hon. J. L. Doggett in behalf of the A. C. L. R. R. Co., together with letter addressed to you under date of June 21, and in connection with this matter I beg to advise:

The notice of appeal and the letter appear to assume that the Comptroller proceeded to make the assessment therein referred to under the provisions of Section 6 of Chapter 8584, Acts of 1921. The Comptroller, however, did not assume to make the assessment under the provision of that Section because of the fact that the pro-

visions thereof are in conflict with the provisions of Section 747, Revised General Statutes of Florida, and in the opinion of the Attorney General the title of the Act constituting Chapter 8584 was not sufficient to provide for and include the provisions of Section 6 within such Act.

The assessment of railroad property for the year 1922 was made under the provision of Section 747, Revised General Statutes, and it is my opinion that the Board of State Equalizers, created under Chapter 8584, Acts of 1921, are without jurisdiction to entertain an appeal in such matters.

Yours very truly,
RIVERS BUFORD,
Attorney General.

CORPORATIONS—APPROVAL.

Tallahassee, Fla., September 6, 1922.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your letter of August 29th with which you hand me proposed Charter of Southern States Finance Corporation and ask me to advise you if the purposes for which the corporation is formed as set forth in the Charter are sanctioned and warranted by the laws of Florida.

I should have answered this communication sooner but for the fact that I have been absent from the State on official business.

I have examined the proposed Charter of Southern States Finance Corporation, and I find that in my opinion

a corporation may be empowered under the laws of Florida to perform all these functions which this Charter proposes that this corporation shall perform, and that the proposed Charter does not propose to authorize a corporation to do or perform any act which is not in harmony with the laws of the State of Florida.

It might be that after the corporation is organized its officers might undertake to do some of the things which are authorized by the Charter in a manner which would not be authorized by law and which acts would, therefore, be contrary to law, but we cannot assume this course will be pursued by the officers of the corporation and upon the other hand we must assume that the corporation when organized will perform those functions which it is authorized to perform in a lawful manner.

I herewith return to you the proposed Charter.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SHERIFF—FEES.

Tallahassee, Fla., October 6, 1922.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Sir:

Replying to your request that I advise you in regard to matters referred to in letter addressed to you by Mr. John F. Tatum, under date of September 30th, I beg to say:

I have advised several Sheriffs that the following

schedule of fees are the proper fees to be charged in cases involving the capture and confiscation of illicit intoxicating liquors and distillers, to-wit:

To Seizing liquor or apparatus.....	\$ 2.00
To Transporting liquor or apparatus per mile @ 12½c .....	....
To Traveling miles at @ 12½ per mile.....	....
To Destroying liquor or apparatus or selling property under order of court.....	5.00
To making return .....	.25

The question, however, as to what Mr. Tatum is entitled to is a matter not dependent up legal fees chargeable by the Sheriff, but is one for adjustment entirely between the Sheriff and his Deputy.

I return herewith letter from Mr. Tatum.

Yours very truly,

RIVERS BUFORD,

Attorney General.

CIRCUIT JUDGES—TRANSFER.

Tallahassee, Fla., December 11, 1922.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Sir:

I beg to advise my opinion in regard to the request made of you by the Bar Association of Dade County to assign another Circuit Judge to assist in disposing of business now pending in the Circuit Court of that county.

Chapter 6900, Acts of 1915, provides as follows:

"Section 1. When a Circuit Judge is by Executive Order assigned to hold one or more terms or parts of terms in a Circuit where he does not reside, the Judge so assigned shall, for the particular case or cases or class of cases or during the term or part of term named or specified in the assignment, have complete jurisdiction when in the county to which he is assigned as if he were a resident Circuit Judge; and such jurisdiction shall be additional to and concurrent with and not exclusive of the resident Circuit Judge's continued jurisdiction over the Circuit wherein he resides; and such jurisdiction shall continue when necessary for the complete disposition of cases by motion in due course after verdict or in settling a bill of exceptions presented in due course.

"Sec. 2. When a Circuit Judge is assigned to another Circuit, none of the Circuit Judges in such other Circuit shall because of such assignment be deprived of or affected in his jurisdiction other than to the extent essential so as not to conflict with the authority of the temporarily assigned Circuit Judge as to the particular case or cases or class of cases or in presiding at the particular term or part of term named or specified in the assignment."

Therefore, it is my opinion that you may assign another Circuit Judge to perform the functions of a Circuit Judge in the Circuit Court of Dade County, setting forth in the Executive Order the class of cases or the branch of the work such assigned Circuit Judge shall function in and that under such order such assigned Circuit Judge may perform those duties to which he is assigned and at the same time the resident Circuit Judge may perform the other functions necessary to be performed by a Circuit Judge.

This statute appears valid on its face and the only way in which its validity may be tested is to put it into opera-

tion. It would not be proper for you to ask the Supreme Court for an advisory opinion as to the validity of this statute, and I do not think the Supreme Court could properly render an opinion advising as to the validity of the proposed acts of Circuit Judges functioning under this statute unless the statute is put into operation and a test case made questioning the jurisdiction of one of the other Circuit Judges. My opinion is that if such a test case were made the validity of the statute would be sustained.

If it is agreeable to Judge Branning and to the Dade County Bar for the order to be made assigning another judge to officiate as Circuit Judge in the trial of all causes now pending and to be tried during the present term of the Circuit Court and limiting his assignment to officiate as trial judge in such causes and making such orders and decrees as may be incident to and connected with the trial of such causes, I think an order so framed would be sufficient to designate the extent of the authority of the assigned judge and would have the effect of leaving all matters in such condition that they may be handled by the resident judge.

Yours very truly,
RIVERS BUFORD,
Attorney General.

TRADE MARK—SERIAL NUMBERS.

Tallahassee, Fla., January 17, 1921.

Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Fla.

Dear Sir:

I return herewith letter from Yawman and Erbe Manu-

facturing Company of January 5, together with folder attached thereto, and beg to advise:

That before this company can be protected in the use of serial numbers as referred to in said letter it would be necessary for the company to acquire from the Government a supplemental grant recognizing such serial numbers as constituting a part of the trade mark.

Under my construction of Section 4995, Revised General Statutes of Florida, the trade mark as adopted by the company is the only emblem in the use of which they would be protected in this State, and as these serial numbers are not included in or made a part of the emblem the State is without any authority to protect the company in the exclusive use of such serial numbers.

Yours very truly,

RIVERS BUFORD,

Attorney General.

CORPORATIONS—FOREIGN—FIDUCIARY.

Tallahassee, Fla., October 4, 1921.

*Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Fla.*

Dear Sir:

Complying with your request of the 3rd instant that I give you my construction of Chapter 8531, Acts of 1921, in connection with the right of a foreign corporation to function in a fiduciary capacity pursuant to the terms of a last will and testament duly probated in this state, I beg to say:

Section 4183, *et seq.*, Revised General Statutes of Flor-

ida, provided for the organization of trust companies and prescribed the powers, duties and privileges of such corporations. Paragraph 13 of Section 4185, Revised General Statutes, provides that such companies shall have the power "to be appointed and to accept the appointment of executor or of trustee under the last will and testament, or administrator with or without the will annexed of the estate of any deceased person, and to be appointed and to act as the committee of the estate of lunatics, idiots and persons of unsound mind, and habitual drunkards."

Chapter 8531, Acts of 1921, prohibits any corporation or association to exercise any of the trust functions prescribed by law of the State of Florida to be exercised by trust companies or associations * * * without having first obtained a charter under the laws of the State of Florida granting the exercise of such powers, duties and functions.

Therefore, you will observe that it is now unlawful for a foreign corporation to perform those functions which are enumerated in Paragraph 13 of Section 4185, Revised General Statutes of Florida.

Yours very truly,
RIVERS BUFORD,
Attorney General.

INTOXICATING LIQUORS—BEER PROHIBITED.

Tallahassee, Fla., November 7, 1921.

*Hon. H. Clay Crawford,
Secretary of State,
State of Florida,
Tallahassee, Fla.*

Dear Sir:

Replying to your request that I advise you whether or

not beer may be legally sold for medicinal purposes in the State of Florida, I beg to say:

The regulation promulgated by the Secretary of the Treasury upon the ruling of the United States Attorney General that beer may be sold for medicinal purposes does not affect the status of beer in Florida. The sale of beer is prohibited under the statutes of the State of Florida, which are based upon the Constitution of this State, and in those states where this condition exists the Federal regulation allowing the sale of beer for medicinal purposes does not apply.

Yours very truly,

RIVERS BUFORD,

Attorney General.

CORPORATIONS—SIMILARITY OF NAMES.

Tallahassee, Fla., January 28, 1922.

*Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Fla.*

Dear Mr. Crawford:

Replying to your letter of January 26th, I beg to say: It is my opinion that Section 4102, Revised General Statutes of Florida, does not preclude you from issuing a permit to a foreign corporation under the name of Southern Surety Company because of the fact that there is a domestic corporation having its charter on file in your office under the name of Southern Securities Company. The words, "securities and surety" are neither identical or closely similar either in meaning or use, and there does not exist such a similarity between the two words as to reasonably occasion confusion.

It is true that there exists a similarity in the sound or euphony of the two words, but I do not think that the statute applies to this similarity, and, it is therefore my opinion, that you are authorized to issue the permit to Southern Surety Company.

Yours very truly,
RIVERS BUFORD,
Attorney General.

BONDS, OFFICIAL—SHERIFF AND TAX
COLLECTOR.

Tallahassee, Fla., February 7, 1922.

*Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of February 6th, inquiring as to the authority of County Commissioners to fix or reduce the bonds of the Sheriff and Tax Collector, I beg to say:

The Sheriff's bond is authorized to be fixed by the Board of County Commissioners at not less than Two Hundred Dollars and not more than Ten Thousand Dollars. Therefore, the reduction mentioned in your letter is entirely within the province of the Board of County Commissioners.

The bond of a County Tax Collector is fixed by statute (Section 1569, Revised General Statutes) at two-thirds of the entire amount of State and County taxes assessed in his county for the year preceding the year in which the bond is required to be given. It is my opinion that this amount would be two-thirds of the amount assessed for

State and County taxes in DeSoto County for the year 1921 after deducting the assessments which were in 1921 transferred to the counties created from DeSoto County. The statute provides, however, that in no case shall the bond required be more than Thirty Thousand Dollars.

Yours very truly,

RIVERS BUFORD,

Attorney General.

TRADE MARK—REGISTRATION.

Tallahassee, Fla., February 9, 1922.

*Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Fla.*

Dear Sir:

I am herewith returning to you application of Zimmerman Bros., for the registration of certain trade marks.

These applications do not comply at all with Sections 4995, 4996 and 4997, Revised General Statutes of Florida. The applicants have merely filed a request that they be allowed to use certain words and names as a trade mark, and this method of applying the exclusive use of such words or names is not contemplated by the statutes.

Yours very truly,

RIVERS BUFORD,

Attorney General.

CORPORATION—RELEASE OF NAME.

Tallahassee, Fla., September 12, 1922.

*Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Fla.*

Dear Sir:

Replying to your request that I advise you whether or not a majority stockholder of a corporation may release the right to the name of such corporation so that it may be adopted and used by a new corporation and Letters Patent issue to a new corporation, I beg to say:

In my opinion, such action is not authorized by law in this State.

I herewith return to you the letter of Messrs. Cooper, Cooper & Osborne which was transmitted to me with your request.

Yours very truly,
RIVERS BUFORD,
Attorney General.

APPROPRIATIONS—BALANCE.

Tallahassee, Fla., March 23, 1921.

*Hon. Ernest Amos,
Comptroller,
Tallahassee, Fla.*

Dear Sir:

I have yours of the 22d instant, in which you request my opinion as to

“Whether any balances shown on Comptroller’s records from the appropriations made by Chapter

6839, 7386 and 7812, Laws of Florida, reverted to the State Treasury at the end of the fiscal years mentioned, or should be carried forward to the succeeding year or years."

In view of the provisions of the Act of Congress, approved May 8, 1914, (U. S. Compiled Statutes of 1916, Sec. 8877a, 8877h) which were assented to by the State (Chapter 6839, Laws of Florida, Acts of 1915) I am of the opinion that any unexpended balance remaining from any of the appropriations mentioned in your inquiry did not revert to the State Treasury at the end of the fiscal year for which they were respectively made, or at all.

The additional amount allowed under the Act of Congress over and above the basic fund of \$10,000 annually was paid to the State upon the express condition that it had appropriated or provided an equal amount to be used in connection with such additional Federal allowance and for the same purpose for which such allowance was made; and not only is there nothing in any of the legislative acts mentioned limiting the expenditure of the appropriation therein made to the fiscal year in which it became available, but it would be an act of bad faith upon the part of the State to secure money from the United States upon the strength of an appropriation made by it for that express purpose, and then to withdraw such appropriation or any part thereof, and the return or reversion to the State Treasury any unexpended balance would be, in effect, a withdrawal *protanto* of the appropriation, and a violation of the agreement made with the United States.

The balances referred to in your inquiry should be carried forward to the credit of the fund for cooperative agricultural work, etc., and remain available for the purpose for which such fund was created until expended in due course.

Yours very truly,
RIVERS BUFORD,
Attorney General.

STATE BOARD OF HEALTH—FUNDS FOR
HEALTH OFFICER.

Tallahassee, Fla., April 21, 1921.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

I herewith hand you checks as follows:

One from Ed. M. Earnest.....\$283.33

One from J. E. Graves 108.33

One from Joe L. Earman 108.34

making a total of \$500.00, which were transmitted to me by Hon. Joe L. Earman to be handed to you to be applied upon the payment of the maintenance of quarters contracted by the State Board of Health to be furnished Dr. Ralph N. Green as State Health Officer at the rate of \$50.00 per month from the 1st day of January, 1920, to the 31st day of May, 1921.

I am advised by Mr. Earman that he and Mr. Graves have heretofore paid sufficient to make the total \$850.00.

Yours very truly,

RIVERS BUFORD,

Attorney General.

GASOLINE TAX—WHOLESALESAERS.

Tallahassee, June 28, 1921.

*Hon Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your communication of the 27th instant, requesting me to advise you of my construction of Chapter 8411, Acts of 1921, commonly called the Gasoline Act.

It is my opinion that Section 7 of this Act limits its application to wholesale dealers and limits the collection of the one cent per gallon tax to gasoline, or other products named in the Act, sold by dealers at wholesale, that is, in wholesale quantities and at wholesale prices, and which gasoline, or other products, shall have been divested of its interstate character before delivery under such sale. It is my opinion that this provision of the Act does not apply to dealers selling direct to consumers at retail, that is, at the usual retail price and in the usual manner of conducting a retail business.

It is my opinion that the Act does not apply to dealers who purchase gasoline from without the State and sell it at retail direct to consumers within the State, but will apply to dealers selling at wholesale within the State to other dealers for re-sale and to consumers direct in wholesale quantities and at wholesale prices, provided, that the gasoline so sold shall have been divested of its interstate character before being delivered to such purchasers.

It is my opinion that the one cent per gallon tax provision of this Act will not apply to gasoline, or other products included in the Act, which shall be sold by any dealer direct to the consumer at retail. Therefore, whether or

not a tax of one cent per gallon is collectable upon any certain quantity of gasoline will depend entirely upon the manner in which the same was purchased and acquired by the retail dealer. A wholesale dealer in gasoline may also be a retail dealer in gasoline, in which event, he would pay the one cent per gallon tax only on his wholesale transactions, and of these only upon those in which the commodity had been divested of its interstate character before being delivered to the purchaser.

Replying to the last paragraph of your letter, I beg to say that in short, my construction of the Act is as follows:

All wholesale dealers in gasoline, or other like products of petroleum, under whatever name designated, used for illuminating, heating, cooking, or power purposes, in this State, shall pay a license tax of \$5.00 for each place of business. All dealers in gasoline, or other like products of petroleum under whatever name designated, used for illuminating, heating, cooking, or power purposes in this State, at WHOLESALE shall be required to pay one cent per gallon for every gallon of gasoline, or other like products of petroleum, sold by him for the purposes aforesaid, in wholesale quantities and at wholesale prices, provided, such gasoline, or other like products of petroleum, shall have been divested of their interstate character before delivery to the person, firm or corporation, who so buys the same in such quantities and at such prices, either for resale or consumption.

Section 9 of the Act excludes from its provision crude oil, fuel oil and kerosene oil.

It is with regret that I observe that this Act is so framed as to require this construction, as it appears to me that the revenue derived from this source will be exceedingly small.

Yours very truly,

RIVERS BUFORD,

Attorney General

POLL TAX—ASSESSMENT.

Tallahassee, Fla., July 9, 1921.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of the 8th instant, beg to say:

The Legislature of 1921 did not change the statute with reference to the assessment of poll tax.

But under the Constitution and Laws of Florida, electors between the ages of 21 and 55 years are required to pay a poll tax before they are qualified to vote.

The Legislature of 1921 passed an Act providing that no person who became eligible to qualify as a voter should be denied the right to vote because of not having paid a poll tax for that year.

Inasmuch as the women who vote in the future will be required to pay a poll tax to qualify to vote, it is my opinion that it is proper for the tax assessor to assess the poll tax so that there will be no confusion about the necessity of the payment of the same in the future.

Yours very truly,

RIVERS BUFORD,

Attorney General.

COURT REPORTER—PAYMENT.

Tallahassee, Fla., July 13, 1921.

*Hon Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

I have your letter of July 12th, and in reply thereto beg to say:

It will not be necessary for Official Court Reporters, whose commissions have not expired to be re-appointed before drawing pay under the provisions of Chapter 8567, for the reason that such Reporters hold their office under appointment by the Governor, upon the recommendation of the Circuit Judge, and Chapter 8567 does not change their status.

As Chapter 8567 did not carry any appropriation the Official Court Reporters could not draw pay under that Chapter for time served prior to July 1st. Therefore, I suggest that you get a list of such Official Court Reporters from the Secretary of State and open your account with them as of July 1st.

If any Court Reporter has any claim for salary from the date at which Chapter 8567 went into effect, which was June 10, 1921, until July 1st, 1921, such claim can only be paid by a Relief Bill.

Yours very truly,

RIVERS BUFORD,

Attorney General.

APPROPRIATIONS—WHEN AVAILABLE.

Tallahassee, Fla., July 14, 1921.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of July 13th, instant, I beg to state:

I have read the opinion rendered your office on March 23, 1920, by my predecessor, Hon Van C. Swearingen, and in the main I concur in that opinion. I have also read the opinion rendered by Mr. Swearingen to your office on August 12, 1920, and in the main I concur in that opinion.

Chapter 7797, Acts of 1919, is an Act making appropriations for the support and maintenance of the State Institutions of higher education created and required to be maintained by Chapter 5384 of the Laws of Florida, approved June 5, 1905, etc. It is my opinion that the appropriations provided under this Chapter were and are available for the payment of any obligations authorized thereunder accruing prior to the date upon which Chapter 8440, Acts of 1921, became a law, which was the 14th day of June, 1921,—that is to say, that if the Board of Control incurred an expense proper to be paid out of this appropriation prior to the 14th day of June, 1921, that the sum thereof should be paid out of the appropriation, although the vouchers for the same may not have been presented to the Comptroller until after the 14th day of June, 1921. The appropriations provided under Chapter 8440, should be drawn upon only for the payment of vouchers for expenses accruing, services performed or material furnished after the 14th day of June, 1921.

A different construction must be given Chapter 7814,

Acts of 1919, and Chapter 8441, Acts of 1921, because Chapter 7814 provides that a certain amount of each appropriation mentioned therein shall be available on the 1st day of July, 1919, and a certain amount thereof shall be available on the 1st day of July, 1920; and Chapter 8441 provides that a certain amount of the appropriations therein shall be available on the 1st day of July, 1921, and a certain amount shall be available on the 1st day of July, 1922. The effect of which is to authorize the use of a certain part of the appropriation from July 1st, 1919, to July 1st, 1920; another part from July 1st, 1920, to July 1st, 1921; another part from July 1st, 1921, to July 1st, 1922, and the other part to become available July 1st, 1922,—and the date at which it will revert to the State Treasury will depend upon the action of the Legislature of 1923. Therefore, all obligations becoming payable prior to July 1st, 1921, under the appropriations provided by Chapter 7814, should be paid from the appropriations provided under that Chapter, although Section 3 of Chapter 8441, provides that the Act shall take effect immediately upon its becoming a law, which was approved by the Governor June 14, 1921.

This I think covers the matters upon which you desire to be advised.

Yours very truly,

RIVERS BUFORD,

Attorney General.

BANKS—TRUST POWERS.

Tallahassee, Fla., July 29, 1921.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir :

Replying to your letter of the 22nd instant, in which you ask me to advise you whether or not in view of Chapter 8531, Acts of 1921, Laws of Florida, you would have the right to grant authority to a National Bank to exercise trust powers should such bank tender the deposit required by Section 4188, Revised General Statutes of Florida, 1920, I beg to say :

I have carefully considered Chapter 8531, Acts of 1921, in connection with Section 11-K of the Federal Reserve Act of the United States Congress, and in this connection I have had recourse to the decision of the Supreme Court of the United States in the case of First National Bank of Bay City vs. Fellows, as Attorney General of the State of Michigan, reported in United States Reports, Vol. 244, at page 216, which is a decision of the highest tribunal of this country, and which decision directly and positively settles the question propounded in your letter. This decision and other decisions, which I have had recourse to in this investigation, have established the principle that the Act of Congress supersedes the Act of the State Legislature when it is the purpose of such Legislative Act to eliminate National Banks from functioning as trustees, executors, administrators and in other trust capacities named in the Federal Reserve Act.

I, therefore, must reluctantly advise you that a National Bank would have the right to demand that you grant authority to such National Bank to exercise trust powers

upon the tender of the deposit required by Section 4188, Revised General Statutes of Florida, 1920, and upon complying with the other provisions of the Federal Reserve Act, Chapter 8531, Acts of 1921, Laws of Florida, to the contrary notwithstanding.

Yours very truly,

RIVERS BUFORD,
Attorney General.

STATE EQUALIZER OF TAXES—SALARY AND
EXPENSES.

Tallahassee, Fla., August 6, 1921.

*Hon. Ernest Amos,
Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to the latter paragraph of your letter of the 2d instant, I beg to say:

I construe Section 8 of Chapter 8584, Laws of Florida, Acts of 1921, to mean that the State Equalizer of Taxes shall be paid a salary and all actual necessary expenses incident to the performance of the duties required of him under the provisions of said Chapter, including such necessary clerical assistance as in his judgment is necessary to properly perform the duties of the office.

As the words "herein provided" can not be construed to refer to any provision existing in the Act they must be construed as surplusage and without any significance, and, therefore, I construe the Act with those words eliminated.

I presume that there is no particular reason why you desire my opinion as to the validity of Sections 6 and 7 of

Chapter 8584, and unless there is some reason why you insist upon having an immediate opinion upon this part of the Chapter, I prefer to defer rendering an opinion thereon until a later date.

Yours very truly,
RIVERS BUFORD,
Attorney General.

APPROPRIATIONS—RELIEF BILL, DR. COX.

Tallahassee, Fla., August 23, 1921.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your letter of August 19th, transmitting the Bill presented to your office for payment by Dr. W. H. Cox, under the provisions of Chapter 8406, Laws of Florida, Acts of 1921, and in which letter you request that I advise your office whether or not the bill should be paid as requested by Dr. Cox.

In my opinion Chapter 8406, Laws of Florida, Acts of 1921, was not passed in accordance with the Constitution of the State of Florida. That said Act is unconstitutional because its alleged passage was in conflict with the Constitution of the State of Florida, and it therefore, becomes my duty to advise you that no money should be paid out of the State Treasury under the provisions of the said Act.

Yours very truly,
RIVERS BUFORD,
Attorney General.

COUNTY COMMISSIONERS—CHARITY FUNDS.

Tallahassee, Fla., August 23, 1921.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of the 20th instant, enclosing letter from Hon. Turner Butler, requesting my opinion as to the propriety of the Board of County Commissioners of Duval County turning over certain funds now on hand to the Board of Charities, and also as to whether or not the Board of Charities would function in place of the Board of County Commissioners under the provisions of Chapter 7920, Acts of 1919, I beg to say:

It is my opinion that the Board of County Commissioners may legally transfer to the Board of Charities any fund which has come to the hands of the County Commissioners for the purpose of being used in proper charities, except such funds as may have accrued under Chapter 7920, Acts of 1919.

It is my opinion that Chapter 8535, does not in any way affect the provisions of Chapter 7920, and that therefore, the provisions of Chapter 7920 should be administered in the future just as they have in the past.

Yours very truly,

RIVERS BUFORD,
Attorney General.

TAXATION—ASSESSMENTS—EQUALIZATION.

Tallahassee, Fla., August 23, 1921.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of August 20th, enclosing letter from Mr. W. T. Harrison, Attorney for Board of County Commissioners of Manatee County, requesting my opinion as to the duties and powers of the Tax Assessor and Board of County Commissioners of Manatee County relative to making, equalizing and hearing complaints of the tax assessments of Sarasota County, I beg to say:

It is my opinion that the statute as enacted creating Sarasota County must govern in this matter, although there is room to question the validity of certain provisions of that statute. It is not the province of this office, however, to question the validity of these provisions, but to construe the provisions as they appear in the Act.

I, therefore, beg to advise you that under Section 11, *et seq.*, of Chapter 8515, Acts of 1921, it became the duty of the Tax Assessor of Manatee County to proceed to perform the duties of Tax Assessor as to the entire territory formerly embraced in Manatee County up to and including the 1st day of July, 1921, and he was required thereby to complete his assessment roll on or before that date.

He was required by said Act to immediately, after the 1st day of July, 1921, deliver to the qualified Tax Assessor of Sarasota County a transcript of the assessment roll covering the territory embraced in Sarasota County, and thereafter it became the duty of the Assessor of taxes of Sarasota County to proceed to perform all other necessary functions required of a County Tax Assessor to complete

the assessment for the territory embraced in Sarasota County.

Under the provisions of this Act, the Tax Assessor and the County Commissioners of Manatee County ceased to function as to tax assessments of property embraced in the territory embraced and included in Sarasota County, and the qualified Tax Assessor of Sarasota County, and necessarily the County Commissioners of such County, thereupon began to function as to such duties.

It is my opinion that under the provisions of this Act, the Tax Assessor and the County Commissioners of Sarasota County should have proceeded, after the 1st day of July, 1921, to do all things necessary to a proper tax assessment that they would have been required to do had Sarasota County existed prior to January 1st, 1921; but when the time shall have arrived for them to levy the millage to be collected in taxes for the present year, that it will be necessary for them to adopt the identical millage which obtains in Manatee County, because the levy constitutes a lien and the levy is necessarily made as of January 1, 1921, and the levy must be uniform throughout the territory affected.

Yours very truly,

RIVERS BUFORD,

Attorney General.

P. S.—I return herewith the letter of Mr. Harrison.

R. B.

GASOLINE TAX—COLLECTION.

Tallahassee, Fla., September 1, 1921.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Complying with your request of August 30th, that I

advise you "as to whether or not the gasoline license tax should be collected by the Comptroller for each place of business in the State, as provided by Chapter 8411, Acts of 1921, in addition to the tax provided to be collected by the Tax Collector under Section 896, Revised General Statutes, or in lieu of that tax," I beg to say:

It is my opinion, that the tax as provided in Chapter 8411, Acts of 1921, should be collected by the Comptroller from every dealer in gasoline selling at wholesale in this State for each place of business, and that as to such dealers, the provisions of Chapter 8411 supersedes the provisions of Section 896, Revised General Statutes.

Yours very truly,

RIVERS BUFORD,

Attorney General.

STATE ROAD DEPARTMENT—LEGAL SERVICES

Tallahassee, Fla., September 9, 1921.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of the 8th instant, requesting that I give you my construction of Section 7, Chapter 7900, Acts of 1919, with reference to the payment by the State Road Department for legal services rendered to it, I beg to say:

My construction of said Section 7 is, that it is the duty of the Attorney-General to act as legal advisor of the State Road Department when called upon by the State Road Department to so act. That it is incumbent upon

the State Road Department to use the office of the Attorney General as its legal advisor in all cases where the services of such office can be conveniently and promptly obtained, but under this Section, the State Road Department is vested with authority and is authorized to employ legal counsel when the legal assistance of the Attorney General can not be conveniently and promptly procured. Whether or not the legal assistance of the Attorney General can be conveniently and promptly procured is a matter to be decided by the discretion of the State Road Department, and if conditions are such that the State Road Department deems it necessary in the premises, the Department may employ legal counsel and pay for the same as other expenses of the said Department are paid.

It has been my practice to promptly render to the State Road Department any legal assistance which has been requested of this office, and I shall at all times endeavor to render to this, and all departments, prompt and efficient service when called upon to do so, but I can understand that a condition might arise in a remote part of the State in which it would be necessary and expedient for the State Road Department to have immediate legal assistance and in which the delay incident to calling upon the office of Attorney General would be detrimental to the State's interest.

Yours very truly,

RIVERS BUFORD,

Attorney General.

CIRCUIT JUDGES—TRAVELING EXPENSES.

Tallahassee, September 12, 1921.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of September 9th, requesting my opinion as to whether or not under the provisions of Chapter 8480, Acts of 1921, amending Section 3004, Revised General Statutes, would authorize the payment of the traveling expenses of Circuit Judges traveling on official business within the Circuits for which they were appointed, I beg to say:

It is my opinion that the Legislature has made no provision by way of appropriation for the payment of traveling expenses of Circuit Judges when traveling on official business within their Circuits, and that therefore, the accounts of the several Circuit Judges for such expenses will necessarily be carried over to the next session of the Legislature and then be provided for by a deficiency appropriation.

The appropriation provided for expenses of Circuit Judges sitting in other Circuits is only \$400.00 for the last half of 1921; \$800.00 for the year 1922, and \$400.00 for the first half of 1923, and I apprehend this is not more than will be needed for such purpose. It certainly would not begin to pay the expenses contemplated in Section 2 of Chapter 8480.

Yours very truly,

RIVERS BUFORD,

Attorney General.

APPROPRIATIONS—DADE MEMORIAL PARK.

Tallahassee, Fla., September 21, 1921.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Under the provisions of Chapter 8503, Acts of 1921, providing for the establishment of Dade Memorial Park, Hon. Fred C. Cubberly, Hon. J. C. B. Koonce and Mrs. A. M. Roland, were appointed Commissioners to locate the scene of the Dade Massacre and to acquire title to 80 acres of land embracing the battle ground involved in the Dade Massacre. It is also provided that the appropriation to pay for the land embracing the battle ground shall not be available until the Attorney General shall have passed upon the sufficiency of the deed and validity of the title to the property.

The Commissioners have submitted to me the proposed form of deed, which I have marked "Exhibit A," and attach hereto, and which I approve. They have also furnished me with an abstract of title and advised me that they have arranged to procure from R. F. Collins when he executes the proposed deed, a satisfaction of a certain mortgage, which appears of record having been executed by C. Beville and wife, Mary Beville, to Herman J. Zeuch; and also a satisfaction of a mortgage executed by R. F. Collins and wife to N. L. Godfrey; also a quit claim deed to himself from W. J. Fussell, and also a quit claim deed to himself from Peninsular Naval Stores Company.

The delivery to R. F. Collins of these four instruments properly executed will cause the fee simple title in and to the Northwest Quarter of the Northeast Quarter, and the Northeast Quarter of the Northwest Quarter of Section 20,

Township 21 East, Range 22 South, to be vested in R. F. Collins. And a deed in the form hereto attached, marked "Exhibit A," executed by R. F. Collins and his wife, Florence E. Collins, to the aforesaid Commissioners will vest a good fee simple title in the said Commissioners.

I transmit to you herewith all papers which have been transmitted to me, including the requisition of the Commissioners upon you, as Comptroller of the State of Florida, for the sum of Two Thousand Dollars to be paid for the lands above described, upon the delivery to them of the documents aforesaid.

I suggest that you return the deed marked "Exhibit A" to the Commissioners, as they will probably wish to have same executed by R. F. Collins and wife.

Yours very truly,

RIVERS BUFORD,

Attorney General.

TAXATION—ASSESSMENT REDUCTIONS.

Tallahassee, Fla., October 8, 1921.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

I have your favor of the 6th instant, with the letter of Hon. Frank A. Walpole attached.

After the assessment of a county has been reviewed and equalized by the County Commissioners, the amount to be raised for county purposes determined, and the rate to be levied for each fund fixed and reported to the County Tax Assessor, they are without power or authority to make any change in the assessment.

Therefore, the County Commissioners of Sarasota County would be without power to reduce the millage or rate of taxation levied for any fund or the amount of taxes to be collected, by instructions or direction to the Tax Collector by resolution or otherwise; but this question is immaterial, in view of the facts relative to the purported Sarasota assessment for 1921.

It appears from the letter of Hon. Frank A. Walpole that the supposed excessive millage to be levied upon property in Sarasota County for the present year was fixed by the Board of County Commissioners of Manatee County; this they were and are without authority to do, and such action is utterly illegal and void and of no effect. as to Sarasota County or the tax payers thereof.

In order to have a valid assessment and levy of taxes for 1921 in Sarasota County, the County Commissioners of that county must review and equalize the assessment, prepare the budget, and fix the millage to be levied for the various funds.

In short, the County Commissioners of Sarasota County, and they alone, must perform all duties relating to such assessment and levy, which the general statutes require to be performed by County Commissioners after the first Monday in July in each year. So far as property in what is now Sarasota County is concerned, the functions of the County Commissioners of Manatee County ceased on July 1st, 1921.

I enclose a copy of a letter to Messrs. Brown & Jones, Arcadia, Fla., and of a telegram to Hon. Fairfax T. Haskins, Arcadia, Fla., the views expressed therein being as applicable to Manatee and Sarasota Counties as to DeSoto and the counties formerly a part of it.

Yours very truly,

RIVERS BUFORD,

Attorney General.

TAXATION—LICENSES—OCCUPATIONAL.

Tallahassee, Fla., October 14, 1921.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir :

Replying to your letter of the 14th instant, asking that I advise you what tax should be collected from the Jacksonville Cracker Works, I beg to say:

There appears to be but one Section of the statutes under which an occupational tax might properly be collected from persons engaged in such business as that conducted by the Jacksonville Cracker Works. Section 838, Revised General Statutes, applies to bakeries, and is as follows:

“Bakeries.—Bakeries, owners or managers of, other than steam, shall pay a license tax of three dollars.

“Bakeries, steam, owners or managers of, shall pay a license tax of ten dollars.”

Therefore, if the Jacksonville Cracker Works owns a steam bakery in connection with its business, or manages a steam bakery in connection with its business, it is liable for the payment of this tax.

Of course, I do not know what the business of this company consists of, or what means are used in the conducting of the business, but it occurs to me that a bakery must necessarily be and constitute a part of the business.

Yours very truly,

RIVERS BUFORD,

Attorney General.

APPROPRIATIONS—FLORIDA FARM COLONY FOR
EPILEPTICS AND FEEBLE MINDED.

Tallahassee, Fla., October 25, 1921.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of the 24th instant in which you ask me to advise you whether or not you are authorized under Section 4 of Chapter 8439, Acts of 1921, to draw your warrant against the appropriation therein mentioned in payment for farm improvements for the Farm Colony of Epileptics and Feeble Minded, I beg to say:

It is my opinion that the statute limits the expenditure of this appropriation to expenditures for "Farm Implements" and that the same may not be lawfully used for the payment of expenditures for other "farm improvements."

It is my opinion that expenditures for farm improvements outside of farm implements will under existing conditions necessarily be paid from the Maintenance Fund.

If the appropriation had been for "Farm Improvements" then it should have been used for all farm improvements, including farm implements. This condition, however, does not exist.

Yours very truly,

RIVERS BUFORD,

Attorney General.

CLERK CIRCUIT COURT—FEES—ABSTRACTING
TAX CERTIFICATE.

Tallahassee, Fla., November 7, 1921.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of November 1st, which I have not heretofore answered because I have not been well, I beg to say:

It is my opinion that before you would be authorized to pay the bill for posting tax certificates to abstract records you should have affirmative proof that the County Commissioners of the County in which the charge is made have, by proper resolution, required the Clerk of the Circuit Court in and for said county to abstract any or all instruments of writing affecting any real estate situated in the county as the same may be recorded. If such resolution is broad enough to require the abstract of tax certificates, then it would become the duty of the Clerk of the Circuit Court to abstract the record of such tax certificates as the same is recorded.

If the County Commissioners have made provision as is required by Section 3848, Revised General Statutes, for this abstract, then the posting of the abstract becomes a part of the necessary record of the instrument and the person chargeable with the fee for recording is also chargeable with the additional fee for posting to the abstract, and then the provision of Section 3848 would necessarily be construed in connection with Section 763, Revised General Statutes, and the sections when construed together would require the certificates not only to be recorded as is provided in Section 763, but the further requirement would obtain that such record be posted to the

abstract, and the fee for recording would be the fee provided for in Section 763, together with the fee provided for in Section 3848, for which the county would be liable for one-half and the State would be liable for the other half, and that part for which the State is liable would be payable out of the appropriation authorized by Chapter 8405, under the head Miscellaneous of,—“Expenses and Collection of Revenue.”

I herewith return the correspondence attached to your letter on this subject.

Yours very truly,
RIVERS BUFORD,
Attorney General.

FLORIDA NATIONAL GUARD—EXPENSES.

Tallahassee, Fla., November 7, 1921.

*Hon Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of November 5th, beg to say:

Under the provisions of Section 65 of Chapter 8502, Acts of 1921, it is my opinion that you are authorized to draw your warrant payable to State property and Distributing Officer for the sum of Two Thousand Dollars to be maintained as a revolving fund by him for the purposes mentioned in said Section. Such warrant should be drawn on the appropriation authorized under Chapter 8405, under the head of National Guard of Florida, “Expenses Florida National Guard, including rent of Armories, Salaries, Allowances and General Operating Expenses.”

Yours very truly,
RIVERS BUFORD,
Attorney General.

SHERIFFS—OFFICE BLANKS—PRINTING
AND PAYMENTS.

Tallahassee, Fla., November 10, 1921.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of November 10th, enclosing a letter from Hon. R. L. Helvenston, and asking my opinion as to whether the bill for printing witness subpoenas should be paid by Baker County or by the Sheriff of Baker County, I beg to say:

It has always been my opinion that blanks of this character should be paid for by the official who uses the blanks, —the reason being that the official collects fees for writing the contents thereof as fixed by statute, and he may either have a blank printed or he may proceed to write his subpoenas on a typewriter or in long-hand if he chooses to do so. In either event, he collects the same fee for writing or copying the process.

It is my opinion that the county should only pay for public and permanent records required to be kept in the office of an official.

Yours very truly,
RIVERS BUFORD,
Attorney General.

TAX ASSESSOR—FEES—PAYMENT.

Tallahassee, Fla., December 10, 1921.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Mr. Amos:

Replying to your letter of December 9th. asking my opinion as to what course you should pursue in settlement with Hon. E. B. Eppes, lately Tax Assessor of Leon County, Florida, I beg to say:

Under the facts stated in your letter, it is my opinion that you have no authority to exercise any discretion in the matter as it now stands. The question of allowing and approving reports of errors, double assessments and insolvencies is entirely within the discretion of the Board of County Commissioners, and when this report has been received and approved by the County Commissioners and a duly authenticated copy thereof is filed with the Comptroller, the only course which he may lawfully pursue is to make his settlement with the Tax Assessor in accordance with such approved and transmitted report.

Therefore, however just and equitable might be the claim of Mr. Eppes, it is not within your power to consider making any settlement thereof, except that which is directed by the statutes. It being my opinion that it is a matter in which the Comptroller is not authorized to exercise a discretion in making settlement, regardless of what facts may have preceded the filing of the report of errors by the Board of County Commissioners, I have deemed it unnecessary to enter into a discussion of these facts with Mr. Myers.

I herewith return the letter from Mr. Eppes which you transmitted to me.

Yours very truly,
RIVERS BUFORD,
Attorney General.

TAXATION—ASSESSMENTS—SPECIAL DISTRICTS OVERLAPPING.

Tallahassee, Fla., December 13, 1921.

*Hon. Ernest Amos,
Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of the 10th inst., from which I have detached a letter from L. J. Maxwell, District Commercial Superintendent of the Western Union Telegraph Company, of Jacksonville, Florida, under date of December 5, which I return herewith, I beg to say:

It is my opinion that a tax levy for overlapping road districts in the manner mentioned in the attached letter may be valid and binding.

I could not say, of course, that the assessments referred to in the attached letter are valid because I have not before me the transcript of all proceedings authorizing the same. Even if I had the transcript of these proceedings before me, I do not think that it would be proper in a case of this kind for the Attorney General to render an opinion touching the validity of the levy. If the validity of the levy is to be brought into question, it should be done in a proper proceeding before a court of competent jurisdiction.

My opinion is,—that such levies may be valid and binding,—based upon Section 1647, Revised General Statutes, and the decision of the Supreme Court of Florida in the case of *C. H. & N. R. R. Co. v. Wells, et al.*, 78 Fla. 227, 82 So. 770.

Yours very truly,

RIVERS BUFORD,

Attorney General.

MOTOR VEHICLES—TRANSFER OF TAGS.

Tallahassee, Fla., January 23, 1922.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of January 13th beg to say:

I am unable to find any provision in the Motor Vehicle License Law which authorizes the change of a license tag from one motor vehicle to another.

I fully realize that the conditions which you mention are working a great hardship upon the individual who operates the motor vehicle for hire, and a provision which would have eliminated this hardship certainly should have been included in the statute and there are many salutary provisions which might have been included in this statute, all of which were inadvertently overlooked by the person or persons who drafted the bill. It is probable that if I had drawn the bill or had been consulted in regard to the bill that I too would have overlooked many of the desirable provisions, but it happens that I had nothing to do with drafting the bill and was never consulted about its contents (and I assume that you are in the same position), and, therefore, as State Administrative Officials we can only construe and apply the statute as the Legislature in its wisdom wrote and enacted it into law, and, while I would like very much to point out a way by which the hardship referred to in your letter might be obviated, I find no such course prescribed in the statute, and of course, I could not officially advise the indulgence of a technical violation of the law.

Yours very truly,
RIVERS BUFORD,
Attorney General.

MOTOR VEHICLEE—CLASSIFICATION FOR HIRE.

Tallahassee, Fla., January 23, 1922.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Mr. Amos:

Replying to your letter of the 14th instant beg to say:

It is my opinion that where persons in the State of Florida are operating a business in which they keep on hand automobiles to be rented or leased to individuals who drive the cars themselves, the owner of the business furnishing the car, but not the driver, and receiving pay for the use of the car upon the basis of the period of time for which the car is in possession of the lessee, that such automobiles come under the classification of automobiles for hire. The only manner in which a private license tag would be proper for the operation of such automobile would be for each lessee to procure a private license tag for the car while the same is being operated for his private use.

Yours very truly,

RIVERS BUFORD,

Attorney General.

MOTOR VEHICLES—TRUCKS OF NON-RESIDENTS.

Tallahassee, Fla., February 24, 1922.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of February 23rd beg to say

that whether or not a license tax can be collected by the State of Florida for the operation of a motor driven truck under the conditions named in your letter will depend entirely upon what the laws of the State of Georgia provide in this respect.

Section 1020, Revised General Statutes of Florida, reads as follows:

"Registration not to apply to non-residents.—The provisions of the foregoing sections relative to registration and display of registration numbers shall not apply to a motor vehicle owned by a non-resident of this State, other than a foreign corporation doing business in this State: Provided, That the owner thereof shall have complied with the provisions of the law of the foreign country, state, territory or federal district of his residence relative to motor vehicles and the operation thereof, and shall conspicuously display his registration number as required thereby; and Provided, That the provisions of this section shall be operative as to a motor vehicle owned by a non-resident of this State only to the extent that under the laws of the foreign country, state, territory or federal district of his residence like exemptions and privileges are granted to motor vehicles duly registered under the laws of and owned by residents of this State."

If, however, under the laws of the State of Georgia a Florida owned motor truck is exempt from the payment of a license tax in Georgia, under conditions mentioned in your letter, then the Georgia owned motor truck would be exempt from the payment of a license in Florida under the same conditions.

Yours very truly,

RIVERS BUFORD,

Attorney General.

ROADS—COUNTY BUDGET.

Tallahassee, Fla., February 25, 1922.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of the 24th instant asking that I give you the benefit of my opinion of a question propounded in a letter from Hon. J. D. Raulerson, under date of February 22nd as follows:

"Here is the situation: A party wishes to build a certain road which will cost \$22,000.00; he will finance the work if the Board will refund him \$11,000.00.00 when they have the money, that will be each one of the Commissioners Districts contributing \$2,200.00. The Board wishes to place in the Budget for 5 years beginning 1922 Budget \$2,200.00 each year to cover this amount, same to be placed in the Outstanding Indebtedness Fund. This road is very important and will be a great benefit to the county at large, also to the several funds as it will cause valuations to rise in that locality."

I beg to say:

It is my opinion that the County Commissioners are not authorized to levy a tax for the payment of the indebtedness of the county under conditions such as those mentioned in Mr. Raulerson's letter and quoted above. The law, Section 2 of Chapter 8437, Acts of 1921, provides specifically that the County Commissioners shall levy a tax not to exceed eight mills for the purpose of constructing, re-constructing, working and repairing the roads, bridges and ferries in such county, and it is my opinion that the Board of County Commissioners can not lawfully evade this restriction pledging the credit of the county in a man-

ner which is not authorized by law, and then levying an additional tax to pay such indebtedness. The proper and legal method by which the money may be procured, if the lawful tax assessment is not sufficient, is to issue bonds.

Yours very truly,

RIVERS BUFORD,

Attorney General.

MOTOR VEHICLES—LICENSES, REFUNDS
NOT REQUIRED.

Tallahassee, Fla., March 1, 1922.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of March 1st with reference to the request of the Winter Haven Water, Ice and Light Company that you refund payment for a license tag under the Motor Vehicle License Law, I beg to say:

I find no authority in the statute for you to make a refund of all or any part of the money received for a license tag, and while I realize that such a provision in the law would have been a matter of fairness and common justice, the fact remains, that it was not so provided, and you are, therefore, unable to comply with the request as you have no right to exercise any discretion in such cases. Should you comply with this request, then you would set a precedent under which it would become incumbent for you to refund the money paid for license tags or a proportionate part thereof whenever by reason of any misfortune the vehicle for which the same was purchased is put out of

commission, which would apply in cases of a truck or automobile being wrecked or burned, or becoming for any other reason inadequate for the use for which the owner intended it.

Yours very truly,
RIVERS BUFORD,
Attorney General.

TAXATION—COUNTY PROPERTY IN ANOTHER
COUNTY.

Tallahassee, Fla., March 23, 1922.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of March 22nd relative to lands situated in Volusia County, Florida, the ownership of which is claimed by Duval County, Florida, and upon which Duval County, Florida claims the right of exemption from taxation, I beg to say:

There is grave doubt in my mind as to whether or not the county authorities of one county may acquire title in the name of that county to real estate situated in another county.

Assuming that the County of Duval could acquire title to real estate situated in Volusia County, then the question as to whether or not such property would be subject to taxation in Volusia County would depend entirely upon the use of the property being exercised by Duval County. If property may be so acquired and is so acquired, then as long as it is actually used for a public county purpose

of Duval County, my opinion is that it is entitled to exemption from taxation, but when such property is not used for a public county purpose, it would immediately become subject to taxation.

I return the correspondence which was attached to your letter.

Yours very truly,
RIVERS BUFORD,
Attorney General.

TAXATION—SCHOOL WARRANTS IN PAYMENT
SCHOOL TAXES.

Tallahassee, Fla., March 23, 1922.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

In reply to your letter of March 22nd in regard to correspondence with Hon. C. A. Howell, of Branford, Fla., relative to using a school warrant issued by the Board of Public Instruction of LaFayette County, Florida, for the payment of taxes, I beg to say:

Under the conditions named in the letter from Mr. Howell, this warrant would be good for the payment of County School taxes assessed in the county issuing the certificate, and as it appears from Mr. Howell's letter that the Special Tax School District, upon the fund of which his warrant was issued, has become a part of the new County of Dixie, I assume the obligations of this district have been assumed by the new County of Dixie, and, there-

fore, this warrant would be good for school districts within the County of Dixie.

I herewith return correspondence which was attached to your letter.

Yours very truly,
RIVERS BUFORD,
Attorney General.

BANKS—SAVING BANK INVESTMENTS.

Tallahassee, Fla., March 23, 1922.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of March 22nd, attaching letter from Mr. F. A. Nave, of Kissimmee, Fla., asking whether or not time warrants are acceptable as Savings Bank investments, I beg to say:

The funds of a Savings Bank may only be invested in those securities specifically named in the statute, and county warrants are not included in those securities designated in the statute.

I herewith return the letter from Mr. Nave for your files.

Yours very truly,
RIVERS BUFORD,
Attorney General.

GASOLINE TAX—SUITS FOR COLLECTION.

Tallahassee, Fla., April 24, 1922.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of April 24th in which you request that I bring suit against each of the wholesale gasoline dealers in this State for money had and received for use of the State in a sum equal to the amount of the taxes which have been collected and is being retained by each of them, respectively, I beg to say:

It is my opinion that such suits should not be brought at this time because the original suit brought to test this law has not been disposed of, and therefore, to bring suits, as suggested by you, would mean to involve the State in numerous actions which could have no beneficial results.

If, upon final hearing and adjudication, the court should enjoin the Comptroller from collecting this tax, then you could pursue your suits no further without being in contempt of the court's order and, in that event, the State could claim no right to the tax which had been collected by the wholesalers from the retail dealers, but the several retail dealers would be legally entitled to a refund of such tax as they have paid to the wholesale dealers and which the wholesale dealer has not remitted to the State. It is my opinion that such money is held by such wholesale dealer in trust for and is the property of the several retail dealers who have paid the same to the wholesale dealer. The same rule would apply as between the retail dealer and the ultimate consumer when the money shall have come from the wholesale dealer back to the retail dealer, but as no records are kept as to purchases or sales from the

retail dealer, it would hardly be practicable for him to re-distribute the fund. That, however, would have no bearing upon his right to receive back the money which has been paid by him and is now in the hands of the wholesale dealer. This also involves legal rights existing between private parties, the adjustment of which does not devolve upon any State Administrative Department.

If, on the other hand, the final decree in the suit now pending should be one refusing the injunction against the Comptroller and dismissing the bill, (which contingency I do not consider at all likely) then would be the proper time to take up with the wholesale dealers the payment of the accrued tax, and unless such contingency is arrived at and the dealers should refuse to pay the accrued tax under such conditions, I do not think that we could possibly be justified in instituting suits to enforce the collection thereof.

Yours very truly,

RIVERS BUFORD,

Attorney General.

TAX COLLECTOR—WHEN MAY ACCEPT PART
TAXES.

Tallahassee, Fla., April 24, 1922.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of the 22nd instant beg to say:
I know of no statute or law authorizing a Tax Collector to accept a part of the taxes assessed against property of

his own volition. He may do so only when such action is authorized by the Board of County Commissioners and the Comptroller.

I return herewith the letter attached to your communication.

Yours very truly,
RIVERS BUFORD,
Attorney General.

GASOLINE TAX—SUITS FOR COLLECTION.

Tallahassee, Fla., April 27, 1922.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your letter of April 25th further concerning suits against wholesale gasoline dealers.

As stated to you in my letter of April 24th, it is my opinion that it would not be proper to file such suits at this time, and, while I would like very much to do anything which I consistently can to carry out the wishes of the head of any State Department, I realize that the responsibility of determining whether or not a suit could be maintained and should be brought in the name of the State rests entirely upon the Attorney General and in such matters he must exercise his own judgment. Therefore, I must respectfully decline to institute such suits, as before suggested, at this time. Should conditions come to exist under which I deem such suits expedient, I shall be very glad to file and push the same to an ultimate conclusion.

Yours very truly,
RIVERS BUFORD,
Attorney General.

COUNTY HOSPITAL—MAINTENANCE.

Tallahassee, Fla., May 8, 1922.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of May 6th asking for my construction of Chapter 8535, Acts of 1921, and particularly as to whether or not, under such Act, the Board of Charities of Duval County, Florida, is required to maintain and operate the County Hospital, I beg to say:

It is my opinion that the law does not require a county to maintain a Charity Hospital, and, therefore, it is not specifically required that the Board of Charities maintain the County Hospital, but it is my opinion, if a county coming within the purview of Chapter 8535 maintains a County Charity Hospital, that it must be maintained and managed under the provisions of Chapter 8535, and the expense thereof must be paid out of the appropriation authorized under the said Chapter.

I attach hereto a copy of a letter which I addressed to Hon. Richard P. Daniel, of Jacksonville, Fla., on May 5th.

Yours very truly,

RIVERS BUFORD,

Attorney General.

TAXATION—COUNTY ROADS.

Tallahassee, Fla., May 12, 1922.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of May 10th, with which you submitted letter from Hon. Edwin Spencer, Jr., I beg to say:

It appears from Mr. Spencer's letter that he wishes your approval of the proposed action of the Board of County Commissioners of Polk County to levy a special tax as an outstanding indebtedness tax to procure money with which to reimburse the County Road Fund for certain money that the Road Fund had received from municipalities and has already expended in road work, and should this approval be granted, it is the purpose of the Board of County Commissioners to levy such a special tax and use the money derived therefrom for road building.

If the Board of County Commissioners had procured the money from the municipalities upon an agreement that the money should be returned to the municipalities, it might be that it could be reasonably considered an outstanding indebtedness, although created without any authority of law. But inasmuch as this money was turned over to the Board of County Commissioners to increase the Road Fund and was used for that purpose and expended in road building, it is my opinion there is no lawful authority under which the County Commissioners are authorized to levy a special tax to create another additional fund to be used as a part of the Road Fund.

I can fully realize that such an arrangement would probably be to the best interest of the county and would bring

about much needed relief, but County Commissioners are only authorized to do those things which the statute gives them power to do, and as Attorney General, I am only authorized to look at the matter from a technical, legal viewpoint.

Yours very truly,

RIVERS BUFORD,

Attorney General.

COSTS—PREPAYMENT FOR PEACE WARRANT.

Tallahassee, Fla., May 18, 1922.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of the 17th instant beg to say:

It is my opinion that a person applying for a peace warrant for the purpose of having an order made requiring another person to give bond, conditioned that he shall do the person applying no bodily injury, may be required by the Magistrate to prepay costs, or give bond for costs. And that in the event upon final hearing of the complaint, which would stand in the name of the State upon the relation of the party complaining, should the Magistrate hold that there existed sufficient ground to require the person complained against to enter into a bond, judgment should be entered against such person for the costs, and if the costs may be collected under execution from such person, then the sum thereof should be refunded to the party depositing costs upon institution of the proceedings. But if the defendant is insolvent, and, therefore, the costs are not

collectable from him, the complainant has a worthless judgment, and in my opinion, is not entitled to refund from the Magistrate.

Yours very truly,

RIVERS BUFORD,

Attorney General.

TAXATION—COUNTY BUILDING LIMITED.

Tallahassee, Fla., May 30, 1922.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of the 27th instant beg to say:

It is my opinion that the Board of County Commissioners of any county is limited to a levy of 5 mills for building purposes under the provisions of Section 1556, Revised General Statutes, and that a Board of County Commissioners is not authorized, under the provisions of said Section, to make two levies of 5 mills each at the same time.

Yours very truly,

RIVERS BUFORD,

Attorney General.

STATE EQUALIZER OF TAXES—EMPLOYEES—
SALARY AND EXPENSE.

Tallahassee, Fla., June 8, 1922.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your letter of June 7th asking my opinion as to whether or not you are authorized and warranted in paying vouchers made against the appropriation carried, or purported to be carried, by the provisions of Chapter 8584, Acts of 1921.

You also state that you have been informed that the State Equalizer has employed persons to go over the State procuring information as to tax assessments and values of property in the counties of the State, which appear to you to be duties imposed upon the State Equalizer alone, and you request my opinion as to your authority in paying salaries and expenses of such persons in the event that I hold the provisions of the said Act constitutional.

In answer to your first query, I beg to say that it appears from the records that Chapter 8584, Acts of 1921, was duly and solemnly enacted by the Legislature of the State of Florida and approved by the Governor in the manner prescribed by the Constitution of the State of Florida, and while I entertain the view that the Act would probably be held invalid should its provisions be contested in the courts upon the theory that it is too vague, indefinite and uncertain to be susceptible of positive construction disclosing the legislative intent sought to be enunciated in its provisions, and upon the further ground that the provisions of the Act are impracticable of performance, and upon the further ground that the Act contains pro-

visions foreign to the subject matter as stated in the enacting clause, and upon the further ground that the Act purports to authorize an appropriation for the payment of clerical assistance limited only by the judgment or caprice of him who may hold the office of State Equalizer and by the amount of available funds in the State Treasury, I do not think it is incumbent upon the Comptroller or any other administrative officer to hold an Act of the Legislature, under such conditions, to be unconstitutional and void. But I conceive it to be the duty of the Comptroller and other administrative officers to proceed to carry out the provisions of the Act as nearly as they possibly can until such time as its provisions may have been held invalid by a court of competent jurisdiction.

If, on the other hand the Act had not been passed by the Legislature in the manner provided by the Constitution, or if it had been apparently vetoed by the Governor, or if it had not been transmitted to the Governor and by him transmitted to the Secretary of State, as is required by the Constitution, and such omissions appear of record, it would be the duty of the Comptroller or another administrative officer affected by the provisions of the Act, to take notice of such omissions and decline to be governed by the provisions of an Act which had, because of such omissions, failed to acquire the dignity of an Act passed as required by the Constitution.

In considering the validity of Section 6 of Chapter 8584 in connection with the assessment of railroad property for 1922, it became necessary to depart from this rule in that it was necessary for the Comptroller, State Treasurer and Attorney General to elect to act either under the provisions of this Chapter, or under the provisions of a former Act of the Legislature, which did not appear to have been repealed by Chapter 8584. The provisions of both could not be harmonized, and, therefore, it was deemed necessary to ignore Section 6 of Chapter 8584.

Replying to your second question, I beg to say that Sec-

tion 8 of Chapter 8584, Acts of 1921, among other things provides: "The salaries and actual necessary expenses of the State Equalizer, including clerical assistance herein provided, incurred in complying with the requirements of this Act shall be paid by the State Treasurer, and a sum is annually appropriated from funds not otherwise appropriated to carry out the provisions of this Act." No where in the Act is the clerical assistance to be available for the State Equalizer of Taxes limited either as to number or to the amount which may be paid for the same. Neither is there any limit in the Act as to items which may be included in expenses. The State Equalizer of Taxes is required to investigate all matters of taxation, and there appears to be no limit fixed upon the scope or manner of his investigations, and, therefore, it appears to have been the legislative intent to leave the scope of the investigation of all matters of taxation and the necessary expense incident thereto, as well as the number of persons to be employed to perform clerical work and the salaries to be paid the same, entirely to the conscience and good judgment of the State Equalizer of Taxes. The Legislature in its wisdom, having placed this responsibility solely in the hands of the State Equalizer, it appears to me that the Comptroller would not be justified in refusing to pay the vouchers approved by the State Equalizer of Taxes, unless it should appear upon the face of such vouchers that they were not in payment for the actual necessary expenses incurred by the State Equalizer of Taxes in investigating matters of taxation, or in payment of his salary, or in payment of the salaries of persons employed by him to perform clerical work incident to his office, so long as the Act has not been held invalid by a court of competent jurisdiction.

Yours very truly,

RIVERS BUFORD,

Attorney General.

TAXATION—ASSESSMENTS—REDUCTIONS.

Tallahassee, Fla., July 6, 1922.

*Hon. Ernest Amos,
Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of July 6th, requesting advice from this office as to the authority of County Commissioners when sitting as a Board of Equalizers to lower an assessment of personal property made by the Tax Assessor when the owner had failed to make return, and with which you enclose a letter from Hon. J. Turner Butler, under date of July 5th, and which letter I return herewith to you, I beg to say:

It is my opinion that if a proper showing is made by the owner that the Board of County Commissioners has the power to reduce the assessed valuation of personal property assessed by the Tax Assessor, whether the same was returned for assessment by the owner or not.

My construction of the second paragraph of Section 725, Revised General Statutes, reading as follows:

“It shall be unlawful for the County Commissioners to lower the assessment of any personal property given in by the owner or assessed by the Assessor which shall not have been specified under oath,”

is that it is unlawful for the County Commissioners to make such reduction unless complaint is made of such assessment and valuation on the day set for hearing complaints and receiving testimony as to the value of any property, real or personal, as fixed by the County Assessor of Taxes, and the character and true cash value of such property as specified under oath in the complaint presented as to the valuation at which the same has been assessed.

It do not think it can be reasonably contended that the words "which shall not have been specified under oath" refer to a return of the property by the owner for assessment, but such words refer to the complaint which may be made of the valuation fixed under the provisions of Section 715, Revised General Statutes.

Yours very truly,

RIVERS BUFORD,

• Attorney General.

TAXATION—SCHOOL DISTRICTS.

Tallahassee, Fla., July 13, 1922.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your letter of July 12th which reads as follows:

"Please give me your opinion as to the validity of the tax levied by Charlotte County under the provisions of Chapter 8664, Special Acts of the Legislature of 1921, where three (3) mills have been levied under said Act for a Special School Tax District in addition to a three mill levy for said district under the Constitution and General Laws of the State, and oblige,"
and in reply thereto, I beg to say:

It is my opinion that a levy of a tax in a Special School Tax District, under the conditions set forth in your letter, is in conflict with the provisions of Section 10 of Article XII of the Constitution of the State of Florida and is, therefore, invalid and the collection thereof may not be lawfully enforced.

The Legislature is not authorized under the Constitution to provide by statute for the levy of more than three (3) mills for the exclusive use of public free schools within a Special School Tax District.

Yours very truly,

RIVERS BUFORD,

Attorney General.

MOTOR VEHICLES—MUNICIPAL LICENSE TAX.

Tallahassee, Fla., July 15, 1922.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

I have your letter of the 14th instant requesting my opinion as to whether or not the City of Ft. Myers may levy and collect an occupational license tax from operators of motor trucks for hire, and in reply thereto I beg to say:

The Attorney General is not authorized to render official opinions as to the powers, duties or franchises of municipal corporations. Municipal corporations are in no manner under the supervision or jurisdiction of any State Administrative office, and, therefore, for the Attorney General to render an opinion as to the powers, duties or franchises of municipal corporations could only serve to involve the office in a needless controversy.

Aside from the above, it would not be possible for me as Attorney General, or any other lawyer, to comply with your request without having in hand the charter and ordinances of the city.

I herewith return telegram which was attached to your letter.

Yours very truly,
RIVERS BUFORD,
Attorney General.

BANKS—PREFERRED CREDITOR.

Tallahassee, Fla., September 29, 1922.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of September 27th in regard to check for \$537.12 given by A. B. Gibson to a Tampa firm and which was drawn upon through their Tampa bank and its correspondent, another State Bank in Tarpon Springs, I beg to say:

As I understand your letter, Gibson was a depositor in Spongs Exchange Bank. He drew his check for \$537.12. This check was presented in due course by another bank in Tarpon Springs to the Sponge Exchange Bank, and thereupon Sponge Exchange Bank paid the check, the correspondent accepting in payment therefor the amount of the check, included with the amounts of other checks in a Cashier's check of Sponge Exchange Bank. Here the transaction closed so far as Gibson and the Tampa bank and the Tampa firm, to whom the check was given, were concerned. The correspondent by accepting the Cashier's check from Sponge Exchange Bank in lieu of legal tender thereby assumed the guaranty of the payment of the sum involved to the endorser and makers of the original check, and thereupon upon default in the payment of the Cashier's

check the item became a matter for adjustment between the Sponge Exchange Bank and the correspondent bank in Tarpon Springs, which had received the same.

It is my opinion that it is only necessary to reply to your question designated as 2nd, which reads as follows:

2nd. "Should I instruct the receiver that the holder of this draft should be treated as a common creditor of the bank, or"

I therefore, advise you to instruct the receiver that the holder of the Cashier's check referred to in your letter as having been given by Sponge Exchange Bank to the correspondent bank in Tarpon Springs should be treated as a preferred creditor of the Sponge Exchange Bank.

Yours very truly,

RIVERS BUFORD,

Attorney General.

RAILROADS—LICENSE FOR INTERSTATE
SLEEPING CARS.

Tallahassee, Fla., October 2, 1922.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of September 29th, with which you enclose letter from Mr. H. W. Johnson, Assistant General Counsel for the Central of Georgia Railway Company, and requesting my opinion as to whether or not the Central of Georgia Railway Company is liable for a license tax upon the sleeping car operated between Tallahassee, Florida, and Atlanta, Georgia, over the Central of Georgia

Railway Company and Georgia, Florida and Alabama Railroad and which is used exclusively for and in interstate transportation of passengers, I beg to say:

The leading case in point with this controversy appears to be *Pickard, Comptroller, vs. Pullman Southern Car Company*, reported in 117 U. S. Reports, page 34.

I have very carefully studied this case as reported and find that it is the holding of the United States Supreme Court that the owners or operators of a sleeping car used for the purpose and in the manner that it is alleged that the sleeping car of the Central of Georgia Railway Company is used is not liable for the payment of a privilege or license tax.

It is, therefore, my opinion that the owners of the car above referred to cannot be required to pay the tax in this case.

I herewith return to you the letter of Mr. H. W. Johnson.

Yours very truly,
RIVERS BUFORD,
Attorney General.

MOTOR VEHICLES—CLASSIFICATION TRUCKS
FOR HIRE

Tallahassee, Fla., October 4, 1922.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of even date asking my opinion as to whether or not under the Motor Vehicle License Law

of the State of Florida a person "hauling road material for a road contractor on a specified job and receiving compensation for such hauling on his motor truck" should have such truck classified as a motor vehicle for hire, and also "where the owner of a motor truck contracts to haul certain crops of oranges to the packing house and receives compensation therefor, though he does not engage in the general drayage business or hold himself out as hauling for the public generally" should have his truck classified as a motor vehicle for hire, I beg to say:

Section 1011, Revised General Statutes of Florida, as amended by Chapter 8410, Acts of 1921, designates the classifications of motor driven vehicles and the license fees required to be paid by the operators of such vehicles. The classifications and license designated in said Section is by statute (1021, Revised General Statutes) made to apply to motor vehicles operated or driven upon the public Highways of the State. Therefore, to ascertain whether or not a motor driven vehicle should be classified as a motor driven vehicle for hire and should be required to pay the license fee as such, it is only necessary to determine two questions: First, is the vehicle used for hire and if so, then, second, is it so used upon a public highway in this State? (Of course, this classification does not apply to motor driven vehicles operated by departments of the Federal, State or County Government). Under the law as it now stands, a person cannot lawfully operate a motor driven vehicle over any part of the public highways of the State of Florida under any private contract for hire without being subject to having such vehicle classified as a motor vehicle for hire.

If A may enter into contract with B whereby A is to haul road material with his truck over the public highways of the State for B for a period of 1 day, or 10 days, or 30 days, and claim immunity from the classification and fees for operating a motor vehicle for hire, he may at the end of that time make another like contract with B, or any

other person, for another period of time and, of course, be entitled to the same immunity and thus continue to operate his truck for hire under special contracts as long as he can find employment.

I fully realize that no provisions having been made by the Legislature for certain contingencies which might arise and for conditions which do arise, that the enforcement of the law as it stands works hardships on a great many people for which you as an officer, charged with the duty of enforcing the law, are not responsible and they should not expect you to either violate your oath of office by non-enforcement or by suspending the operation of law where it appears that amendments would be advisable. These are conditions which the people must remedy through the action of their representatives in the Legislature.

Yours very truly,

RIVERS BUFORD,

Attorney General.

GAME—HUNTING LICENSE—FEES OF COUNTY
JUDGE.

Tallahassee, Fla., October 6, 1922.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of October 5th, enclosing letter from Messrs. Johnston & Garrett of Kissimmee, I beg to say:

It is my opinion that the County Judge is not author-

ized to retain any part of the license collected under Section 11 of Chapter 8510.

It is my opinion that fees for the issuing of these licenses are not payable out of the School Fund.

It is my opinion that the County Judge is entitled to receive his fee for this service out of the General Revenue Fund of the county.

Yours very truly,
RIVERS BUFORD,
Attorney General.

TAXATION—OCCUPATIONAL LICENSE—
GASOLINE DEALERS.

Tallahassee, Fla., October 23, 1922.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of October 21st I beg to say:

The occupation license tax provided for in Section 811, Revised General Statutes of Florida, is graduated in amount according to the population of the town in which the business therein mentioned is located, and when a license tax is so graduated the population must be determined by reference to the last lawfully taken census of such municipality, that is, upon the latest authorized census which may be either the census authorized by the Federal Government, or the census authorized by the State Statutes, or a census authorized by the Charter and Ordinances of the municipality. Such graduation of license tax cannot lawfully be based upon the mere rumors as to pop-

ulation, nor upon the opinion which may be entertained by the Tax Collector, as to the number of inhabitants within the municipality.

Sections 1, 3, 7 and 8 of Chapter 8411, Acts of 1921, must be construed together, and when so construed it is my opinion that Section 896, Revised General Statutes of Florida, is thereby repealed, and that the above mentioned sections constitute the authority of the State Officials to collect an occupational license tax from wholesale dealers in gasoline and other petroleum products, and this authority is vested in the Comptroller of the State of Florida. Such tax as is provided in Section 1 of Chapter 8411, Acts of 1921, should be paid to the Comptroller of the State of Florida, and that the license tax formerly paid by wholesale dealers in gasoline and other petroleum products, under the provisions of Section 896, Revised General Statutes of Florida, is not now authorized.

Yours very truly,

RIVERS BUFORD,

Attorney General.

TAXATION—OCCUPATIONAL LICENSES—
HOTELS.

Tallahassee, Fla., November 1, 1922.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of October 31st, *in re*: Requested Information Contained in Letter from Hon. Mack Tyner, Tax Collector of Okaloosa County, I beg to say:

It is my opinion that Sections 2126 and 2127, Revised General Statutes of Florida, supersede the provisions contained in Section 842, Revised General Statutes of Florida, and that the provisions contained in Section 842, Revised General Statutes of Florida, are therefore void and of no effect.

Yours very truly,
RIVERS BUFORD,
Attorney General.

MOTOR VEHICLES—NON-RESIDENT FOR
HIRE CARS.

Tallahassee, Fla., November 25, 1922.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

I have your letter of the 24th instant incorporating the following request:

“Will you kindly advise me if in your opinion, the reciprocal feature of the Motor Vehicle License Law of Florida (Section 1020 of Revised General Statutes as amended), applies to owners of cars placed in use for hire.”

Replying thereto I beg to say that it is my opinion that the statute as it stands places all motor driven vehicles owned and operated by non-residents, regardless of the purpose for which they are used or the classification to which they belong, within the reciprocal privileges provided by Section 1020, Revised General Statutes.

I am sure that the Legislature did not intend to exempt

motor driven vehicles for hire from the payment of the license tax in this State because of the same being owned or operated by non-resident individuals, and that it was the purpose of the Legislature to have the terms of reciprocity apply only to tourists and pleasure cars. But the Section is so drafted as to designate no difference in the rule to be applied as between motor driven vehicles for hire and motor driven vehicles to be used for other purposes.

Of course, you understand this privilege only applies to motor driven vehicles coming from those States which accord a like privilege to residents of the State of Florida, and the privilege is authorized to be applied only so far as such privilege is accorded by the other State to residents of the State of Florida.

Yours very truly,

RIVERS BUFORD,

Attorney General.

BONDS—SCHOOL DISTRICTS—APPROVAL.

Tallahassee, Fla., February 9th, 1921.

*Hqn. Jno. C. Luning,
State Treasurer,
Tallahassee, Fla.*

Dear Sir:

I herewith transmit to you transcript of the record of the issue and validated bonds of Special Tax School District No. 1 of Jackson County, Florida, in the sum of Ten Thousand Dollars to bear interest at six per cent. payable semi-annually, maturing September 1st, A. D. 1950.

I have carefully examined this record and find that the

issue of said bonds was lawfully authorized and has been validated by an order of the Circuit Court duly recorded in the public records of Jackson County, Florida.

I, therefore, advise, that when the said bonds are properly executed by the Chairman of the County Board of Public Instruction of Jackson County, and attested by the Superintendent of Public Instruction of Jackson County, they will become good and valid securities of the said Special Tax School District, and I hereby approve the purchase of the same by the State Board of Education of the State of Florida.

Yours very truly,

RIVERS BUFORD,

Attorney General.

BONDS—MUNICIPAL—APPROVAL.

Tallahassee, Fla., February 9th, 1921.

*Hon. Jno. C. Luning,
State Treasurer,
Tallahassee, Fla.*

Dear Sir:

I herewith transmit to you certified copy of Resolution adopted by the Honorable City Commission of Tallahassee, Florida, on the 9th day of February, 1921, wherein the said Commission authorizes the sale of certain bonds therein named to the State Board of Education of the State of Florida.

I have examined the transcript of the record of the authority to issue and the validation of these bonds and I find that the City Commission of Tallahassee, Florida, has complied with the law and had lawful authority to issue

the said bonds; that the said bond issue was validated by an order of the Circuit Court duly recorded in the public records of Leon County, Florida; and that the said City Commission has authority to sell and dispose of these bonds in the manner proposed in the said resolution, a copy of which I hand you herewith.

I, therefore, approve the purchase of the bonds referred to in said Resolution by the State Board of Education of the State of Florida.

Yours very truly,

RIVERS BUFORD,

Attorney General.

BONDS—SCHOOL DISTRICT—APPROVAL.

Tallahassee, Fla., February 9th, 1921.

*Hon. Jno. C. Luning,
Treasurer,
Tallahassee, Fla.*

Dear Sir:

I herewith transmit to you transcript of the proceedings authorizing the issue of bonds by Special Tax School District No. 13 of Jackson County, Florida. I have examined this record and find that the issue of Ten Thousand Dollars 6% thirty year bonds is lawfully authorized and has been validated by an order of the Circuit Court duly recorded in the public records of Jackson County, Florida.

I therefore, advise you that when these bonds have been duly executed by the Chairman of the County Board of Public Instruction of Jackson County, and attested by the Superintendent of Public Instruction of Jackson County, that the same will be good and valid securities of the said

Special Tax School District, and the purchase of the same by the State Board of Education is hereby approved.

Yours very truly,

RIVERS BUFORD,

Attorney General.

BONDS—SCHOOL DISTRICT—APPROVAL.

Tallahassee, Fla., March 22, 1921.

*Hon. John C. Luning,
State Treasurer,
Tallahassee, Fla.*

Dear Sir:

I have examined the transcript of the proceedings under which Special Tax School District No. 1, of Gadsden County, Florida, has issued Thirty Thousand Dollars of bonds as of the date of the 1st day of January, A. D. 1920, to bear interest at the rate of six per cent. per annum from date, payable semi-annually on the 1st day of January and the 1st day of July of each year, the said bonds to be payable serially as follows: "Two Thousand (\$2,000.00) Dollars in each of the years 1921 to 1935, both inclusive, both principal and interest to be paid in gold coin of the United States, at the office of the Superintendent of Public Instruction in the City of Quincy, County of Gadsden, State of Florida, or at any banking house in the City of New York, or Chicago, Illinois, said banking company to be designated by the purchaser of said bond at the time of the purchase thereof."

I find that the Board of Public Instruction of said County of Gadsden, in the State of Florida, is duly authorized to issue and sell the said bonds, and that the same

constitutes a valid and binding obligation upon the said Special Tax School District No. 1 of Gadsden County, Florida, and I therefore, approve the purchase of the same by the State Board of Education of the State of Florida.

Yours very truly,

RIVERS BUFORD,

Attorney General.

BONDS—SCHOOL DISTRICT— APPROVAL.

Tallahassee, Fla., March 24, 1921.

*Hon. John C. Luning,
State Treasurer,
Tallahassee, Fla.*

Dear Sir:

In re: Special Tax School District Number Three, Calhoun County.

I have examined the record of the proceedings had *in re:* Bond Issue Special Tax School District Number Three of Calhoun County, in the sum of Twenty-two Thousand Dollars in denominations of Five Hundred Dollars each, dated November 15, 1919, and bearing interest at the rate of five and one-half per cent. interest payable semi-annually, bonds numbered one to forty-four inclusive. The bonds numbered from one to twenty inclusive, to be payable November 15, 1939, and the bonds numbered twenty-one to forty-four inclusive, to be payable November 15, 1949.

The record of the proceedings had with reference to this issue show the said bonds to have been issued in accordance with the laws of the State of Florida as to such matters, the issue has also been validated by a decree of the Circuit Court of the Fourteenth Judicial Circuit of Florida, duly recorded in the Public Records of Calhoun County, Florida.

I find this issue to be a valid and binding obligation of the said Special Tax School District Number Three of Calhoun County, Florida, and therefore, recommend the purchase thereof by the State Board of Education of the State of Florida.

Yours very truly,

RIVERS BUFORD,

Attorney General.

TAXATION—OCCUPATIONAL LICENSE—INSURANCE AGENT.

Tallahassee, Fla., April 1, 1921.

*Hon. J. C. Luning,
State Treasurer,
Tallahassee, Fla.*

Dear Sir:

I have your favor of the 31st ult., as follows:

“I have been requested by an Insurance Agent in this State to advise him as to whether or not in the case where an agent is appointed to succeed a retiring agent, the retiring agent having paid the county and city tax applicable to insurance agents, the newly appointed agent is obliged to pay also the county and city tax.

“I would thank you to write me your opinion in the above case, and oblige.”

The answer to your query is to be determined by ascertaining whether or not licenses which may be imposed upon insurance agents by counties, cities and towns, as authorized by Section 911 of Revised General Statutes, are transferable. Section 805 of said Statute provides that

"All business licenses may be transferred with the approval of the Comptroller with the business for which they were taken out when there is a bone fide sale and transfer of the property used and employed in the business as stock in trade," etc., and this is the only provision of the statute relating to the transfer of licenses.

Since, under the circumstances you mention, there is no sale or transfer to the newly appointed agent of any property used and employed as a stock in trade, it appears that he may be required to pay the city and county license tax notwithstanding the payment of a like tax by the retiring agent.

Yours very truly,
RIVERS BUFORD,
Attorney General.

BONDS—MUNICIPAL—APPROVAL.

Tallahassee, Fla., April 20, 1921.

*Hon. John C. Luning,
State Treasurer,
Tallahassee, Fla.*

Dear Sir:

I herewith return to you the record of the proceedings of the Town Council of DeFuniak Springs, Fla., providing for the issue of bonds amounting to Thirty-five Thousand Dollars, to which is attached proceedings of the Circuit Court of Walton County, Fla., validating such bonds.

I have examined the transcript of the record of proceedings of the Town Council of DeFuniak Springs, Fla., providing for the issue of the said bonds and also the trans-

cript of the record of the proceedings of the Circuit Court of Walton County, Fla., validating said bonds, and I find that in such proceedings the provisions of the Constitution and the laws of the State of Florida have been complied with, and that such bonds when properly executed will be and constitute the valid general obligation of the said Town Council. I therefore, approve the said issue as being valid securities.

Yours very truly,
RIVERS BUFORD,
Attorney General.

FLORIDA FARM COLONY FOR EPILEPTICS AND
FEEBLE MINDED—APPROVAL DEED.

Tallahassee, Fla., April 21, 1921.

*Hon. John C. Luning,
State Treasurer,
Tallahassee, Fla.*

Dear Sir:

I have examined the deed attached hereto, from Alachua County, Florida, to the Board of Commissioners of State Institutions for the State of Florida, and find the same to be in proper form.

Yours very truly,
RIVERS BUFORD,
Attorney General.

INSURANCE—SURETY BONDS FOR COMPANIES.

Tallahassee, Fla., May 17, 1921.

*Hon. John C. Luning,
State Treasurer,
Tallahassee, Fla.*

Dear Sir:

In re: Maryland Casualty Company.

Replying to your letter of the 16th inst., beg to say:

Under the provisions of Section 4283, Revised General Statutes of Florida, 1920, a fire insurance company to qualify to do business in this State may either deposit with the State Treasurer bonds of the United States, bonds of any State of the United States, or District of Columbia, or bonds of the cities or counties of this State, or cash to the amount of Twenty Thousand Dollars, or in lieu thereof, such company has the right to file with the State Treasurer a surety bond in the amount of Twenty Thousand Dollars of a Surety Company authorized to do business in the State of Florida, to be approved by the State Treasurer, *the Surety Company offering such bond agreeing in case of failure of any insurance company so bonded to deposit immediately with the State Treasurer Twenty Thousand Dollars in cash* to be held by the State Treasurer for the protection of all legal claims against such company in this state.

Therefore, the first question to be determined is: Have either the Jefferson Insurance Company, Liberty Marine Insurance Company, or North Atlantic Insurance Company failed? If either company has failed, and prior thereto, Maryland Casualty Company had entered into the Twenty Thousand Dollar bond with the stipulation above referred to, then it is the duty of the Maryland Casualty Company to immediately deposit the full sum of Twenty

Thousand Dollars with the State Treasurer, and upon failure or refusal to do so, legal action should be taken to force the Maryland Casualty Company to comply with its agreement.

It is my opinion that you would not have the authority to cancel the permit or license of the Maryland Casualty Company until a judgment has been procured against the company, and it has for a period of three months failed and refused to satisfy such judgment.

Yours very truly,

RIVERS BUFORD,

Attorney General.

BONDS—SCHOOL DISTRICT—APPROVAL.

Tallahassee, Fla., May 21, 1921.

*Hon. John C. Luning,
State Treasurer,
Tallahassee, Fla.*

Dear Sir:

I have examined the transcript of the record of the proposed bond issue of Ten Thousand Dollars of Special Tax School District No. 7 of Holmes County, Florida.

I find that the election authorizing the issue of said bonds was held in accordance with the law governing such matters.

I find that the bond issue was properly validated by the final decree of the Honorable Circuit Court of the Ninth Judicial Circuit of Florida, on the 26th day of February, A. D. 1920.

I find that the said bonds constitute the valid and binding obligation of the said Special Tax School District No.

7 of Holmes County, Florida, and therefore, recommend the purchase of Eight Thousand Dollars of said bond issue by the State Board of Education of Florida at ninety-seven cents.

Yours very truly,

RIVERS BUFORD,

Attorney General.

BONDS—SCHOOL DISTRICT—APPROVAL.

Tallahassee, Fla., May 30, 1921.

*Hon. Jno. C. Luning,
State Treasurer,
Tallahassee, Fla.*

Dear Sir:

I have your request of this date asking me to render an opinion as to the validity of a Twenty-two Thousand Dollar bond issue of Special Tax School District Number Three of Calhoun County, Florida.

This matter was presented to me in full on March 24th, and on that date I prepared a communication to you in the following language, to-wit:

“*In re*: Special Tax School District Number Three, Calhoun County.

“I have examined the record of the proceedings *In re*: Bond Issue, Special Tax School District Number Three of Calhoun County, in the sum of Twenty-two Thousand Dollars in denominations of Five Hundred Dollars each, dated November 15, 1919, and bearing interest at the rate of five and one-half per cent., interest payable semi-annually; bonds numbered one to forty-four inclusive. The bonds numbered from

one to twenty, inclusive, to be payable November 15, 1929, and the bonds numbered twenty-one to forty-four, inclusive, to be payable November 15th, 1949.

"The record of the proceedings had with reference to this issue show the said bonds to have been issued in accordance with the laws of the State of Florida as to such matters, the issue has also been validated by a decree of the Circuit Court of the Fourteenth Judicial Circuit of Florida, duly recorded in the Public Records of Calhoun County, Florida.

"I find this issue to be a valid and binding obligation of the said Special Tax School District Number Three of Calhoun County, Florida, and therefore, recommend the purchase thereof by the State Board of Education of the State of Florida."

Since that time no record of this matter has been presented to me, and therefore, assuming that it stands in *status quo* I hereby affirm my recommendation of that date.

Yours very truly,

RIVERS BUFORD,

Attorney General.

INSURANCE—STATE FIRE FUND.

Tallahassee, Fla., July 11, 1921.

*Hon. J. C. Luning,
State Treasurer,
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your favor of the 9th instant as follows:

"Will you kindly advise me whether, under Section 1312 of the Revised General Statutes of Florida, as amended by Chapter 8430, approved June 14, 1921, the State Treasurer is required or permitted to insure, in the State Fire Insurance Fund, either of the following classes of property:

"(1) Buildings or personal property of the United States Government, while used by any officer or department of the State of Florida, under agreement with the Federal Government that shall property shall be returned at a subsequent date, or, if damaged or destroyed, such property shall be replaced by the State;

"(2) Buildings or personal property belonging to the United States Government and used by any officer or department of the State of Florida, without the agreement referred to in the preceding sub-paragraph.

"Thanking you for your official ruling upon this inquiry at your convenience, I am," etc.

In reply to your inquiry therein made I beg to advise that while the cited statute in terms refers only to "property of the State" that phrase and the provisions of the statute as a whole are properly to be construed from the view point of the purpose sought thereby, and in connection with the general laws and usages pertaining to insurance.

The purpose of the statute is to provide for indemnifying the State for loss or damage by fire, and whether or not any particular property is insurable under the terms of this statute depends not exclusively upon the State's ownership of it but whether it has an "insurable interest" therein as well.

This statute provides the only method by which the State can protect itself against loss by fire, and it certainly was not intended to afford a less adequate protection than was formerly obtainable under policies of general fire insurance companies.

"A bailee of property has an insurable interest

therein." 148 Fed. Rep. 77-78.

"If such relation exists between the assured and the property that injury to it will, in natural consequence, be a loss to him, he has an insurable interest therein." L. R. 2 Exch. (Eng.) 139.

"If a person has such an interest in property that he will suffer a pecuniary loss by its destruction, he has an insurable interest therein." 153 Mass. 335.

"Any person has an insurable interest in property, by the existence of which he receives a benefit, or by the destruction of which he will suffer a loss, whether he has, or has not any title in, or lien upon, or possession of, the property itself." 98 Mass. 423.

"It may be stated as a general proposition, sustained by all the authorities, that whenever a person will sustain a loss by a destruction of the property he has an insurable interest therein." 81 Me. 488.

"An 'insurable interest' in property is such an interest as shall make the loss of the property of pecuniary damage to the insured. It is a right, benefit, or advantage arising out of the property or dependent thereon, or any liability in respect thereof, or any relation to or concern therein, of such a nature that it might be so affected by the contemplated peril as to directly damnify the insured." 2 Joyce, Ins. Secs. 887, 888.

It is clear from the above authorities that the State has an insurable interest in the property used by any department or officer of the State for State purposes under the circumstances set forth in either of the numbered paragraphs of your inquiry.

As the State has such insurable interest in the property referred to as it could have insured with the regular insurance companies prior to the adoption of the statute in question which was designed to and did displace the former practice, I am of the opinion that the State Treasurer has the same power and duty with reference to insuring the

property mentioned in the State Fire Insurance Fund as exists in relation to any property of the State under said statute.

The *interest* which the State has in such land or chattels of the United States is itself "property of the State" and insurable by you as such.

Yours very truly,

RIVERS BUFORD,

Attorney General.

BONDS—SCHOOL DISTRICT—APPROVAL
CONDITIONED.

Tallahassee, Fla., August 8, 1921.

*Hon. John C. Luning,
State Treasurer,
Tallahassee, Fla.*

Dear Sir:

I have examined the transcript of record of the proceedings *in re* election in Special Tax School District No. 3, Broward County, Florida, to authorize the issue of \$32,000.00, 6%, bonds of said district, to be dated January 1, 1921.

It is my opinion that \$22,000.00, to-wit: \$17,000.00 for building school buildings, and \$5,000.00 for improving school buildings may legally issue under the proceedings had, and that these bonds should mature according to the first maturity dates fixed in the original proceedings for the first 22 bonds.

Before I would be willing, however, to advise the Sinking Fund Commission to purchase these bonds I would insist that proceedings be conducted in the Circuit Court

in and for Broward County necessary to procure a final decree of said court validating the said \$22,000.00 of bonds of the said Special Tax School District, and adjudicating that the said Special Tax School District was legally created and established.

See *Lyle v. State*, 67 So. 574; *Steen v. Board of Public Instruction*, 85 So. 684; *Johnson v. Board of Public Instruction*, 88 So. 308.

Yours very truly,

RIVERS BUFORD,

Attorney General.

BONDS—SCHOOL DISTRICTS—VALIDATION.

Tallahassee, Fla., August 22, 1921.

Hon. Jno. C. Luning,
State Treasurer,
Tallahassee, Fla.

Dear Sir:

I am in receipt of your letter of even date transmitting certified copy of final decree *in re*: Special Tax School District No. 4, Sumter County, Florida, Bond Issue of Six Thousand Dollars, authorized by election on the 9th day of July, 1918.

I find that the decree validates the issue, but there is nothing showing the purpose for which the bonds were issued, and under recent Supreme Court decisions this is a most vital question. I therefore, suggest that you request Mr. W. N. Potter, Clerk of the Circuit Court, at Bushnell, Fla., to send you a certified copy of the resolution or notice, showing the purpose for which the bonds were voted.

As soon as I have this information in hand I can advise you definitely as to the purchase.

Yours very truly,

RIVERS BUFORD,

Attorney General.

DEPOSITORIES—SECURITIES FROM.

Tallahassee, Fla., August 31, 1921.

*Hon. John C. Luning,
State Treasurer,
Tallahassee, Fla.*

Dear Mr. Luning:

I have examined abstract transmitted to me with your letter of August 26th, pertaining to the west three-fifths of Lot 2, Block 2, Howry's Addition, DeLand, Florida, as shown by map in Book G, page 701, of the public records of Volusia County, Florida.

This abstract, as far as it goes, discloses that the title was, on the 15th day of February, 1913, vested in George A. Dreka. However, the abstract does not bring the title down to date and therefore I can not approve the title upon this examination. It will be necessary for interested parties to have the abstract brought down to date before I will be in a position to pass on the validity of the title.

Yours very truly,

RIVERS BUFORD,

Attorney General.

BANKS—MUNICIPAL—APPROVED.

Tallahassee, Fla., September 8, 1921.

*Hon. John C. Luning,
State Treasurer,
Tallahassee, Fla.*

Dear Sir:

I have examined the record as presented to me from your

office, involving the authority of the Town of Perry to issue Twenty-five Thousand Dollar Street Improvement Bonds, dated July 1, 1917, in denominations of One Thousand Dollars, numbered from one to twenty-five, inclusive, maturing July 1, 1947, interest at 5%, payable semi-annually at the office of the Town Treasurer.

I am of the opinion that the copies of the proceedings and proofs which have been submitted to me show lawful authority for the issuance and sale of the said bonds, and that the said bonds constitute valid and binding obligations of the said Town of Perry, and that all the property within said Town of Perry is subject to the levy of tax to provide money to pay the same.

I herewith return all papers to you.

Yours very truly,

RIVERS BUFORD,

Attorney General.

BONDS—SCHOOL DISTRICT—APPROVAL.

Tallahassee, Fla., September 26, 1921.

*Hon. John C. Luning,
State Treasurer,
Tallahassee, Fla.*

Dear Sir:

In re: Bonds of Special Tax School District No. 3, Broward County, Fla.

I have heretofore examined a transcript of the record of the authority to issue certain bonds by the County Board of Public Instruction of Broward County, Fla., and I am this day in receipt of an additional transcript of a petition to re-validate such bond issue in the sum of Seventeen

Thousand Dollars for building additional school buildings, and Five Thousand Dollars for improving school buildings, together with a final decree of the Circuit Court, dated on the 24th day of September, 1921, and after a careful examination of these transcripts, I beg to say:

It is my opinion that the County Board of Public Instruction of Broward County is authorized to issue and sell bonds of Special Tax School District No. 3, of Broward County, in the sum of Seventeen Thousand Dollars, for building additional school buildings, and Five Thousand Dollars for improving school buildings, to be dated January 1, 1921, and to be in denominations of One Thousand Dollars each; to bear interest at the rate of 6%, payable annually. Such bonds to be numbered 1 to 22, inclusive, and bonds numbered from 1 to 8, inclusive, maturing January 1, 1926; bonds numbered 9 to 16, inclusive, maturing January 1, 1931; bonds numbered from 17 to 22, inclusive, maturing January 1, 1936. That such bonds when issued and sold will constitute the valid and binding obligation of the said County Board of Public Instruction of Broward County, and will constitute a valid and binding lien upon all property situated within Special Tax School District No. 3, of Broward County, Florida.

I, therefore, approve the issue.

Yours very truly,

RIVERS BUFORD,

Attorney General.

BONDS—SCHOOL DISTRICT—APPROVAL.

Tallahassee, Fla., October 19, 1921.

*Hon. John C. Luning,
State Treasurer,
Tallahassee, Fla.*

Dear Sir:

As per your request of October 17th, I have examined the transcript of the record of the issue of bonds of Special Tax School District Number One of Pinellas County, Florida, in the sum of Eight Thousand Dollars, together with the validation proceedings, and the resolution of the County Board of Public Instruction of Pinellas County relative to the same.

I find that the said bond issue has been lawfully authorized and that said issue in the sum of Eight Thousand Dollars of 30 year, 6% bonds, when properly executed constitute the valid and binding obligation of the said Special Tax School District Number One of Pinellas County, Florida.

I approve the purchase of said Eight Thousand Dollar bond issue by the State Bond Redemption Commission, and transmit to you herewith the transcript of the record which was attached to your letter.

Yours very truly,

RIVERS BUFORD,

Attorney General.

INSURANCE—TITLE GUARANTY.

Tallahassee, Fla., December 2, 1921.

*Hon. John C. Luning,
State Treasurer,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of December 1st to which you attach a copy of a letter of even date from Guarantee Title and Mortgage Company, of West Palm Beach, Florida, and in which you request me to advise you whether or not Union and Planters Bank and Trust Company, of Memphis, Tenn., would be subject to any provisions of law of this State should it enter into proposed contract and thereafter write policies guaranteeing the validity of title to lands in this State, I beg to say:

Sections 4247, 4248 and other Sections of the Revised General Statutes relative to the subject matter of these Sections apply to every insurance company, every association, every firm or individual, whether incorporated or not incorporated, which may directly or indirectly take any risk or transact any business of insurance in this State. The business of writing policies guaranteeing the validity of title to real estate is a recognized line of insurance, and a bank, firm, corporation or individual engaging in the business of writing policies in which the validity of title to real estate is guaranteed is engaged in the business of insurance in this State, and is amenable to the laws governing persons, firms or corporations engaged in such business.

Yours very truly,
RIVERS BUFORD,
Attorney General.

BONDS—SCHOOL DISTRICT—APPROVAL.

Tallahassee, Fla., February 10, 1922.

*Hon. John C. Luning,
State Treasurer,
Tallahassee, Fla.*

Dear Sir:

I have examined the transcript of the record of the issuance of Fifteen Thousand Dollars of the bonds of Special Tax School District No. 1 (Quincy) of Gadsden County, Florida, such bonds to be in the denomination of One Thousand Dollars and to mature one bond each year beginning July 1, 1923, interest thereon to be at the rate of six per cent per annum, payable semi-annually.

I find from the said transcript that the election authorizing the issuance of the said bonds was legally called and held, and that a final decree of the Honorable Circuit Court, dated the 3rd day of December, A. D. 1921, has been duly entered in the office of the Clerk of the Circuit Court of Gadsden County, Florida, wherein and whereby the legality and validity of such bond issue is in all matters upheld.

Therefore, I find that the said bonds when duly executed by the proper officials will constitute the valid and binding obligation of Special Tax School District No. 1 (Quincy) of Gadsden County, Florida, for the full sum of Fifteen Thousand Dollars, with interest thereon payable as therein stipulated.

I herewith return the transcript of record to you.

Yours very truly,

RIVERS BUFORD,

Attorney General.

BONDS—SCHOOL DISTRICT—APPROVAL.

Tallahassee, Fla., February 16, 1922.

*Hon. John C. Luning,
State Treasurer,
Tallahassee, Fla.*

Dear Sir:

I have examined the transcript of the record of election to authorize the issuance of Twenty Thousand Dollars of bonds by Special Tax School District No. 1 of Baker County, Florida, together with the record of the action of the Board of Public Instruction of Baker County, Florida, relative to the issuance of said bonds, and have also examined the transcript of the record of proceedings had in the Honorable Circuit Court of Baker County, Florida, to validate the issuance of said bonds.

I find from the said transcripts that the Board of Public Instruction of Baker County, Florida, is duly authorized to issue for Special Tax School District No. 1 of Baker County, Florida, bonds in the sum of Twenty Thousand Dollars in denominations of One Thousand Dollars each, dated August 8th, 1921, bearing interest at the rate of six per cent. per annum, payable semi-annually, for the purpose of erecting, equipping and furnishing a new school building at Macclenny within said district, and that said bonds when executed and issued by the proper officials will become the valid and binding obligation of said Special Tax School District No. 1 of Baker County, Florida, for the full payment of principal and interest as herein before stated.

Yours very truly,

RIVERS BUFORD,

Attorney General.

DEPOSITORIES—SECURITY—APPROVAL.

Tallahassee, Fla., March 3, 1922.

*Hon. John C. Luning,
State Treasurer,
Tallahassee, Fla.*

Dear Sir:

I have examined the mortgage from Fraternal Investment Corporation to Highlands Bank and Trust Company to secure the payment of the sum of Five Thousand Dollars, which mortgage is dated February 6, 1922, and recorded in Mortgage Book 1, page 285, of the Public Records of Highlands County, Florida, and I have also examined the abstract of title to the lands described in said mortgage and find that Fraternal Investment Corporation, a corporation organized under the laws of the State of Florida, was at the date of the execution of said mortgage the owner and holder of the fee simple title to the lands described therein.

I find the mortgage and note to have been properly executed and upon receipt by you of a proper assignment of the said mortgage, together with the assignment of insurance policy therein referred to, I approve the said mortgage and note as valid security for the sum of Five Thousand Dollars.

Yours very truly,

RIVERS BUFORD,

Attorney General.

BONDS—SCHOOL DISTRICT—APPROVAL.

Tallahassee, Fla., March 13, 1922.

*Hon. John C. Luning,
State Treasurer,
Tallahassee, Fla.*

Dear Sir:

I have examined the transcript of the record of the issuance of bonds in the sum of Twenty Thousand Dollars by the County Board of Public Instruction of Gadsden County, Florida, of Special Tax School District Number Three.

I find that this bond issue has been authorized by an election held on the 8th day of November, 1921, in the sum of Twenty Thousand Dollars in denominations of One Thousand Dollars each, bearing interest at the rate of six per cent. per annum, payable semi-annually. That the said election and other matters and things required under the law to be done have been performed in proper manner, and that the said election and bond issue have been validated and confirmed by the final decree of the Circuit Court of the Second Judicial Circuit of Florida, in and for Gadsden County.

I, therefore, find that the said bonds constitute the valid and binding obligation of the said Special Tax School District, and I approve the same for purchase by the State Board of Education of Florida.

Yours very truly,

RIVERS BUFORD,

Attorney General.

BONDS—SCHOOL DISTRICT—APPROVAL.

Tallahassee, Fla., May 13, 1922.

*Hon. John C. Luning,
State Treasurer,
Tallahassee, Fla.*

Dear Sir:

I have examined the transcript of the record of the authorization of the issuing of bonds of Special Tax School District No. 7, Levy County, in the sum of Ten Thousand Dollars, bearing six per cent. interest, payable semi-annually, as submitted to me with you letter of May 12th.

I find from the records submitted that the issue of said bonds has been duly authorized and validated by the final decree of the Circuit Court for the Eighth Judicial Circuit of Florida, and that the said bonds, when duly executed and issued, will become and be a valid and binding obligation of the said Special Tax School District, and, therefore, I approve the purchase of the same.

Yours very truly,

RIVERS BUFORD,

Attorney General.

BONDS—MUNICIPAL—OPINION.

Tallahassee, Fla., August 4, 1922.

*Hon. Jno. C. Luning,
State Treasurer,
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your letter of August 3rd, attaching

transcript of the record of the issuance and validation of bonds of the municipality of the City of Bushnell in the sum of Ten Thousand Dollars, dated July 1st, 1921, bearing interest at the rate of 6%, payable semi-annually.

I have examined the transcript and find that the issue of said bonds were duly authorized by the municipal authorities of the City of Bushnell and that the said bonds were issued for a lawful purpose and constitute a valid and binding obligation of the said City of Bushnell.

It is my opinion, however, that the interest coupons of said bonds, payable on or before July 1, 1922, are invalid because the record shows first, that the bonds were dated as of the date prior to the passage of the ordinance authorizing the same, and the bonds were in fact not issued until May 22, 1922, and therefore, no tax was leviable for the purpose of paying either interest or sinking fund upon said bonds prior to the date upon which they were issued.

Yours very truly,

RIVERS BUFORD,

Attorney General.

DEPOSITORIES—SECURITY—APPROVAL.

Tallahassee, Fla., November 24, 1922.

*Hon. John C. Luning,
State Treasurer,
Tallahassee, Fla.*

Dear Sir:

As per your request I have examined abstract submitted covering the record of title to "The West 30 feet of the South 75 feet of Lot 1 in Block 10, Hart's Map of Jacksonville, said lot being more particularly described

as follows: Beginning at the Northeast corner of the intersection of Bay and Ocean Streets; thence Easterly along the North line of Bay Street 30 feet; thence Northerly on a line parallel with the East line of Ocean Street 75 feet; thence Westerly parallel with said first mentioned line 30 feet thence Southerly along the Easterly line of Ocean Street 75 feet to the place of beginning; the said property being the same as that described in that certain indenture recorded in Deed Book 26, page 370."

I find the fee simple title to this property appears to be vested in the Guaranty Company, a corporation, subject to a mortgage given by the Guaranty Company, a corporation, to the United States Trust Company, a corporation, to secure the payment of a note for the sum of \$34,500.00, dated October 23, 1922, and payable one year from date, with interest at the rate of 6%, payable semi-annually, such note having interest coupons attached thereto and further subject to a paving lien No. 9183, dated December 8, 1921, in the sum of \$456.01.

It is my opinion that the mortgage above mentioned is a valid lien against the above described property subject only to the paving lien above mentioned, and that the mortgage and note above mentioned constitute good and valid security for the amounts therein named.

Yours very truly,

RIVERS BUFORD,

Attorney General.

DEPOSITORIES—SECURITY—OPINION.

Tallahassee, Fla., November 24, 1922.

*Hon. John C. Luning,
State Treasurer,
Tallahassee, Fla.*

Dear Sir:

As per your request I have examined the abstract of title submitted to me covering the record *in re*: Lot 2 and Lot 3 in Block 70, Section 22, Township 33 South, Range 28 East, as per recorded plat of the Town of Avon Park.

I find the fee simple title to said property to be vested in F. M. Whidden subject to a mortgage dated October 2, 1922, to First Trust and Savings Company of Avon Park, Fla., to secure a note for the sum of \$11,000.00, dated October 2, 1922, and payable 5 years after date, with interest at the rate of 8%, payable annually, which mortgage and note has been assigned to John C. Luning, State Treasurer.

I consider this mortgage a valid lien upon the property and the note and mortgage good security for the amounts therein named.

Yours very truly,
RIVERS BUFORD,
Attorney General.

DEPOSITORIES—SECURITY—OPINION.

Tallahassee, Fla., June 30, 1921.

*Hon. W. N. Sheats,
State Supt. of Public Instruction,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of June 30th, in which you ask

whether or not interest bearing time warrants, such as are authorized in Chapter 8115, Acts of 1919, for Monroe County, Florida, could be filed by a Depository with the Comptroller as Depository Bonds, I beg to say:

This is a matter resting entirely with the Comptroller, and as to which he has not requested an opinion from this office.

I hold that it is not proper for the Attorney General to advise any person, except the Governor and officer whose duty is involved, concerning the proper performance of the duties of such officer.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SCHOOLS—DISTRICTS—CONSOLIDATION.

Tallahassee, Fla., May 3, 1922.

*Hon. W. N. Sheats,
State Superintendent,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of May 2nd beg to say:

The method by which two or more Special Tax School District may be consolidated is provided in Chapter 7913, Acts of 1919. The provisions of this Chapter require an election to be held in the entire affected territory upon petitions presented to the County Board of Public Instruction, and it is my opinion that two or more Special Tax School Districts may not lawfully be consolidated except by pursuing the course designated under the provisions of this chapter.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SCHOOLS—LOCATION ON FEDERAL PROPERTY.

Tallahassee, Fla., May 12, 1922.

*Hon. W. N. Sheats,
State Superintendent,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of the 11th instant, attaching letters from Mr. Wm. Marler, I beg to say:

Under the law, as I see it, a County School Board is under no legal obligation to maintain a public school situated on a United States Government Reservation.

I find no legal impediment which would prevent a County School Board from maintaining such a school for the benefit of citizens of the county if an arrangement can be made by which such a school may be practicably maintained.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SCHOOLS—LANDS—DRAINAGE TAX.

Tallahassee, Fla., June 22, 1922.

*Hon. W. N. Sheats,
State Superintendent,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of June 30th, to which you attach letter from Baldwin Drainage District addressed to

the State Board of Education, under date of June 14th, I beg to say:

I assume that Baldwin Drainage District has proceeded to assess taxes against certain lands the title to which is vested in the State Board of Education in Section 16, Township 2 South, Range 24 East, under what the supervisors deemed to be authority vested in them to do so under the provisions of Section 1114, Revised General Statutes of Florida.

It is my opinion that this Section can not be made to apply to lands the title to which is held by the State Board of Education of the State of Florida, because to do so would violate the provisions of Sections 4 and 5 of Article XII of the Constitution of the State of Florida, and, therefore, I advise you in my opinion the levy of drainage taxes against such land is invalid and non-enforceable.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SCHOOLS—DISTRICTS—ATTENDANCE
OUTSIDE.

Tallahassee, Fla., June 23, 1922.

*Hon. W. N. Sheats,
Supt. Public Instruction,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of the 23rd, asking my opinion as to whether or not school pupils may be required to pay tuition when attending a public school not within the district in which they reside, I beg to say:

The law does not appear to contemplate that the payment of tuition shall be required. The law does contemplate—Section 437, Revised General Statutes—that when children of one county attend the public schools of another county that the county of their residence shall pay to the school district in which they attend school the pro rata share of such non-resident children toward the expense of conducting the school, and the same law, under Section 577, Revised General Statutes, is made to apply to children residing in one district attending school in another district of the same county, and applies to all schools alike.

I am of the opinion, however, that if an amicable agreement can be arrived at between the Trustees and the County Board of Public Instruction on the one hand and the parents or guardians of the children on the other hand for the payment of tuition for the attendance of such children in a school located in a district beyond that in which they reside that such arrangement would not be in violation of the law, and it would not be improper for such agreement to be entered into and carried out.

You will observe from reading Section 577 of the Revised General Statutes that a pupil may only attend school in a district beyond that in which such pupil resides with the consent and approval of the Board of Public Instruction, and the Trustees of the school which the pupil wishes to attend.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SCHOOLS—DISTRICT FUNDS—CONTROL.

Tallahassee, Fla., September 6, 1922.

*Hon. W. S. Cawthon,
State Supt. of Public Instruction,
Tallahassee, Fla.*

Dear Sir :

I have your letter of the 6th instant as follows:

“Kindly give to the office of State Superintendent a written opinion as to whether or not the Trustees of a Special Tax School District have exclusive control of District Funds in the payment of teachers’ salaries.”

Replying thereto I beg to say it is my opinion that Trustees of a Special Tax School District have not exclusive control of district funds in the payment of teachers’ salaries. It is my opinion, however, that Trustees of a Special Tax School District have the right to say what proportion of the school funds raised within the district shall be applied in any year to the salaries of teachers, and it is the duty of such Trustees on or before the first day of June of each year to prepare an itemized estimate showing the amount of money necessary and likely to be raised for the supplement of the County School Funds appropriated to the district for the next ensuing scholastic year * * * stating the amount that will be applied to the salaries of teachers.

That it thereupon becomes the duty of the County Board of Public Instruction to add the amount set apart for the salaries of teachers in each school within the Special Tax School District to the county appropriation made for that school, and upon this determine the salaries to be paid teachers and the length of term that the school shall continue. The Special Tax Fund set apart by the Board of

Trustees for the payment of teachers shall not be subject to requisition for any other purpose and may not be used for any other purpose.

Therefore, my conclusion is that while the Trustees of a Special Tax School District have not exclusive control of district funds in the payment of teachers' salaries that such Trustees are vested with authority to set aside a certain proportion of the funds arising from the Special Tax within such Special Tax School District for the payment of teachers, and when this proportion of the fund has been so set aside in compliance with the statute it may be used by the County Board of Public Instruction for that and for no other purpose.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SCHOOLS—APPEALS FROM COUNTY BOARD.

Tallahassee, Fla., November 18, 1922.

*Hon. W. S. Cawthon,
State Superintendent,
Tallahassee, Fla.*

I herewith return to you the files submitted to me on yesterday, *in re*: S. A. Merchant, Principal of Altha High School, Altha, Fla.

It is my opinion that an appeal does not lie in a case of this kind from the action of the County Board of Public Instruction to the State Superintendent of Public Instruction, nor to the State Board of Education. Such appeals do lie when the action of the County Superintendent of the County Board of Public Instruction has been to suspend or revoke a teacher's certificate, but in the instant

case such action has not been taken. This is a case where a County Board of Public Instruction for reasons which that Board deemed sufficient, has terminated the employment of a principal of a high school, who claims to have been teaching under a contract to teach the term of school and who also claims there are no adequate grounds for the action of the County Board.

This presents a question of legal rights as between the County Board and the deposed principal. Neither the State Superintendent of Public Instruction nor the State Board of Education is vested with authority to adjudicate and determine these rights, and in such cases, if the rights cannot be amicably adjusted between the parties, it will be necessary for the aggrieved party to resort to court action.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SCHOOLS—DISTRICT ELECTIONS.

Tallahassee, Fla., November 23, 1922.

*Hon. W. S. Cawthon,
State Superintendent,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of November 20th I beg to say:

It is my opinion that in Special Tax School Districts, where elections have been held for the purpose of either electing trustees or of fixing a millage to be levied in such districts that no election for either purpose can be authorized in such districts within two years from the date of the election already held.

It is my opinion that Section 10 of Article XII of the Constitution, as amended by the vote at the General Election held November 7, 1922, will become effective from the date of the canvass of the returns of that election, and thereafter newly created Special Tax School Districts and Special Tax School Districts in which the two year limitation may have expired may proceed to hold elections and authorize the millage which may be required for such district not to exceed the amount of ten mills, which is the limit fixed by the Constitution as amended, and that the present statutes providing for such elections are adequate for the purpose of such elections.

Yours very truly,

RIVERS BUFORD,

Attorney General.

PRISONERS—TERM AND DISCHARGE.

Tallahassee, Fla., January 17, 1921.

*Hon W. A. McRae,
Commissioner of Agriculture,
Tallahassee, Fla.*

My dear Mr. McRae:

Replying to your communication of this date I beg to advise that a prisoner under parole has the same legal status as a prisoner in custody of prison officials. Therefore, his time of service will be counted just the same as if he were in custody of prison officials. His term would expire just the same and he should be discharged in the same manner.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SHELL FISH—LEASES OYSTER BOTTOMS.

Tallahassee, Fla., February 7th, 1921.

*Hon. W. A. McRae,
Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of January 19th, which I have had under consideration since that date, I beg to say:

I have examined the proposed declaration of trust attached to your communication, together with Exhibits thereto attached relative to Florida Co-Operative Colony.

It appears from the contents of these papers that certain individuals have declared themselves trustees for all persons who may become associated with them in the project outlined in the said proposed declaration of trust, and to control all the oyster bottoms leased to them and their said associates, all of whom are to be residents of the State of Florida. The proposed business, however, if conducted as outlined would be in violation of the provisions of Section 1243, Revised General Statutes of Florida, in that it is proposed by these trustees to hold and control as trustees more than five hundred acres of water bottoms leased for oyster culture. Therefore, leases should not be executed to these trustees or their known associates, who by becoming members of this Colony agree that oyster bottoms leased by them shall be controlled and managed by said trustees, if it appears that the aggregate acreage acquired by the trustees or their said associates exceeds five hundred acres.

I also observed from examination of the papers handed me with your letter that these same trustees, or some of them, are attempting to perfect several other organizations, which they propose to operate under declarations of trust

taking the title or rather the leases to oyster bottoms in the name of the organization, declaring themselves trustees for the organization and selling certificates of stock to non-residents of the State of Florida. In my opinion this is mere subterfuge, the purpose of which is to evade the law, which has reserved these privileges for the citizens of the State of Florida and corporations lawfully doing business in this State, and in my opinion the leases, which you know are to be used in the advancement of such subterfuge, should be declined.

I have carefully considered the provisions of the leases, a copy of which you have submitted, and I suggest that you incorporate in all leases hereafter signed the conditions which I have outlined on paper hereto attached. When you have embodied these conditions in this lease you shall have only placed therein the limitations which are now provided by law, but the lessee will take the same knowing what these conditions are and it will not be so easy for persons to be deceived by any one who might wish to perpetrate fraud along this line.

Yours very truly,

RIVERS BUFORD,

Attorney General.

PRISONERS—COMMITMENT.

Tallahassee, Fla., February 28, 1921.

*Hon. W. A. McRae,
Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:

I enclose herewith files relative to State prisoner, Jimmie Truitt.

I apprehend from the contents of this correspondence that the Clerk of the Criminal Court of Record of Dade County, did not issue the commitment for Jimmie Truitt until about the time he was transferred to the Prison Farm, when as a matter of fact it should have shown date of the date of sentence.

I suggest that you take this matter up immediately with Hon. J. B. Hawkins, Clerk of the Criminal Court of Record of Dade County, and ascertain if this surmise is correct, and if so, suggest to him that he issue a commitment as of the date of sentence, and that he also transmit to you a letter from Judge J. Emmett Wolfe, stating that the first commitment was improperly dated and that the new commitment bears the proper date so that your files will show proper proof of the error. Upon receipt of such new commitment, accompanied by letter from Judge Wolfe, you then can change your record to conform therewith and issue a new discharge card to this prisoner.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SHELL FISH—LEASES OYSTER BOTTOMS.

Tallahassee, Fla., February 28, 1921.

*Hon. W. A. McRae,
Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:

Replying to your request that I advise you with reference to the contents of a letter which you have received from Mr. William Turner, under date of February 24th, I beg to say:

In my opinion, it is very probable that the right of the State to lease certain bottoms along the sea coast, which were affected by titles existing prior to the acquisition of Florida by the United States, will have to be the subject of judicial determination, and the sooner this matter is thrashed out in the courts and thereby finally settled, the better it will be for all parties.

These questions, however, would not apply to so-called riparian rights accruing under titles deraigning from the United States Government.

There is no provision of law by which you, or any other State Official, could reimburse any person for an expenditure which such person might make in developing oyster or clam beds, and for such person even to be reimbursed for the amount paid for the lease, special legislative enactment would be required.

I herewith return the letter from Mr. Turner.

Yours very truly,

RIVERS BUFORD,

Attorney General.

LEGISLATOR—HOLDING POSITION OIL
INSPECTOR.

Tallahassee, Fla., March 26, 1921.

*Hon. W. A. McRae,
Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of the 25th inst., beg to say:

It is my opinion that Mr. E. M. Johns, of Starke, Fla., who occupies the position of Oil Inspector and at the same

time occupies the position of being a member of the Legislature, it will be necessary for Mr. Johns to resign either one position or the other.

Yours very truly,

RIVERS BUFORD,

Attorney General.

COMMISSIONER OF AGRICULTURE—QUARTERLY
BULLETINS—CHEMICAL ANALYSES NOT
INCLUDED.

Tallahassee, Fla., July 23, 1921.

HON. W. A. McRae,
Commissioner of Agriculture,
Tallahassee, Fla.

Dear Sir:

I have been unable to find any statute which requires the Commissioner of Agriculture to include in his Quarterly Report a statement of the analyses made by the State Chemist during the quarter for which such report is made. It is, therefore, my opinion that you are not required to include the statement of analyses made by the State Chemist during each quarter in each issue of the Quarterly Bulletin published by your department.

Yours very truly,

RIVERS BUFORD,

Attorney General.

PRISONERS—TRANSFER TO INDUSTRIAL
SCHOOL.

Tallahassee, Fla., July 28, 1921.

*Hon. W. A. McRae,
Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:

In re: Escaped Convict—Moseby Purvis.

Section 6316, Revised General Statutes 1920, provides that the Board of Pardons may commute the sentence of a boy under 18 years of age from that of imprisonment in the State Prison to confinement in the Florida Industrial School for Boys, and that the Board of Pardons may revoke such commutation at any time and return such prisoner to the State Prison to serve his sentence.

There is no authority vested in the Board of Commissioners of State Institution to order such a change in sentence.

Therefore, if the order transferring Purvis from the State Prison to the Florida Industrial School for Boys was made by the Board of Commissioners of State Institutions it was void and no action is necessary to revoke it.

If, however, the order was made by the Board of Pardons, such Board may by affirmative order revoke the same upon the ground that Purvis escaped from the Florida Industrial School for Boys.

I herewith return to you letters handed me on yesterday.

Yours very truly,

RIVERS BUFORD,

Attorney General.

PRISONER—PAROLE—CONDITIONAL PARDON.

Tallahassee, Fla., August 26, 1921.

*Hon. W. A. McRae,
Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of August 25th, I beg to say:

It is my opinion that the same rule does not apply to a paroled convict which does apply to a convict receiving a conditional pardon in this: A paroled convict remains in the custody and under the control of the prison authorities, although some third person becomes responsible directly to the prison authorities for the care of the convict. Therefore, his parole time goes as a credit on his prison service. In the case of a convict receiving a conditional pardon credit on term of service is abated at the date of his conditional pardon and stands in status quo until he is either restored to citizenship or returned to prison to complete his sentence, because of the violation of the condition of his pardon.

Yours very truly,
RIVERS BUFORD,
Attorney General.

FERTILIZER—INSPECTION—SAMPLE.

Tallahassee, Fla., September 14, 1921.

*Hon. W. A. McRae,
Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of the 13th instant, requesting

my opinion as to whether or not you have authority under Section 15 of Chapter 4893 to promulgate and enforce a rule requiring that samples of fertilizer shall be taken and submitted to you within 60 days after the purchase and delivery of such fertilizer, I beg to say:

It is my opinion that the rule which you have adopted and promulgated prescribing 60 days as a limit in which samples should be taken after purchase is authorized by the provisions of Section 15 of said Chapter 4893, and that it is not in conflict with any of the other provisions of said Act.

Yours very truly,

RIVERS BUFORD,

Attorney General.

PRISONERS—TRANSFER FROM FLORIDA INDUSTRIAL SCHOOL.

Tallahassee, Fla., December 30, 1921.

*Hon. W. A. McRae,
Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of even date, *in re*: Bert Hughes, I beg to say:

I have examined the records and find that Bert Hughes was given an alternative sentence of four years in the Florida Industrial School for Boys, and in the event that he was not received at the school or could not be kept in the school, that he should serve in lieu thereof two years in the State Prison at hard labor.

I find that the commitment was issued to conform to the

terms of the sentence, and that this commitment was delivered to the Superintendent of the Florida Industrial School.

I am advised that Bert Hughes is now an escape but Dr. Willis tells me that the Superintendent thought he would have him back today. I, therefore, suggest that you arrange with Mr. Knight to advise you as soon as he has Bert Hughes in custody again and you advise Mr. Knight to securely keep him until you can get an officer there to take charge of him.

Upon the above being done you then authorize an officer to receive Bert Hughes from Mr. Knight, together with the commitment issued by the court at Tallahassee, and also that he have Mr. Knight sign the certificate which I attach hereto, and that with the commitment and certificate such officer shall deliver Bert Hughes to the Superintendent of the State Prison Farm.

Yours very truly,

RIVERS BUFORD,

Attorney General.

FEEDS—STANDARD FIXED.

Tallahassee, Fla., February 4, 1922.

*Hon. W. A. McRae,
Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of February 3rd, beg to say:

In my opinion Chapter 5661, Acts of 1907, does not authorize the Commissioner of Agriculture to fix and prescribe standards for commercial feeding stuff, but Section

2044, Revised General Statutes of Florida, supersedes Chapter 5661 and Chapter 5662, Acts of 1907, and provides, "that it shall be the duty of the Commissioner of Agriculture and the State Chemist to fix standards of purity for food products where the same are not fixed by this Chapter in accordance with those promulgated by the Secretary of Agriculture of the United States, as adopted by the Board of Food and Drug Inspectors of the United States Agricultural Department, when such standards have been published, and when not published the Commissioner of Agriculture and the State Chemist shall fix such standards," etc.

May I assume to call your attention to the fact that it is not at all safe to rely upon original Acts of the Legislature prior to 1919 as a guide, because of the fact that Section 2 of Chapter 7838 adopting the Revised General Statutes of Florida, specifically repeals every part of the statutes of a general nature not included in the revision, while Section 1 adopts the revision to become the statute law of this State, and, therefore, reference to the Acts of the Legislature prior to 1919, which are of a general nature are superseded by the revision.

Yours very truly,
RIVERS BUFORD,
Attorney General.

GAME—QUAIL IN CAPTIVITY—SHIPMENT FROM
STATE.

Tallahassee, Fla., March 3, 1922.

*Hon. W. A. McRae,
Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your letter of March 3rd, together

with letter from Hon. Jos. S. Eggert, State Fish and Game Warden, Somerset County, New Jersey, in which he asks permission to ship some quail from Florida to New Jersey for the purpose of stocking a bird reservation. In reply thereto I beg to say:

If any person has quail in captivity for such purpose within this State such person is thereby violating the law of the State of Florida, and should any person capture quail for such purpose they would thereby violate the law of the State of Florida. Neither you nor any other official nor board of officials in this State are authorized to grant a permit such as is requested by Mr. Eggert.

Yours very truly,

RIVERS BUFORD,

Attorney General.

FERTILIZERS—REGULATION OF PRICE LISTS.

Tallahassee, Fla., April 4, 1922.

*Hon. W. A. McRae,
Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of April 1st in which you ask the following question:

“So long as a manufacturer shows on his guaranteed analysis tags the correct information as required under Section s, of the commercial fertilizer law, is there any provision by statute that would authorize this Department to regulate statements appearing in the price lists or other advertising matter put out by fertilizer manufacturers?”

I beg to say:

It is my opinion that so long as the statements appearing

in the price lists or other advertising put out by the fertilizer manufacturers are true in substance and in fact, the Department of Agriculture has no authority to interfere by regulation with such statements. I, of course, am of the opinion that a regulation prohibiting the putting out of false statements in price lists or other advertising would be entirely proper and within the province of the Department.

Yours very truly,

RIVERS BUFORD,

Attorney General.

TIMBER—SUNKEN LOGS.

Tallahassee, Fla., October 2, 1922.

*Hon. W. A. McRae,
Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of September 28, I beg to say:

It is my opinion that logs that have been sunken and abandoned in the lakes and streams of the State of Florida are such derelict goods as may be contemplated under Section 3887-3892, Revised General Statutes of Florida.

Under the provisions of the Statutes, it is my opinion that such logs may be taken into custody by the Sheriff and sold and the proceeds thereof disbursed in the manner directed in the Statutes above referred to.

Inasmuch as the question will probably be propounded to you as to whose duty it shall be to raise the logs and put them into marketable condition, I will say that this may be done by the Sheriff, or any other person, but when it is

so done, it becomes the duty of the person so raising the same to report such salvage to the County Judge, and Section 3888, Revised General Statutes of Florida, provides for the arriving at the amount of compensation to be paid to the person performing the salvage and also provides the manner of such payment.

Yours very truly,

RIVERS BUFORD,

Attorney General.

P. S.—I am herewith returning the letter of Mr. Davis to you.

CITRUS FRUITS—STANDARD OF PURITY.

Tallahassee, Fla., October 3, 1922.

Hon. W. A. McRae,
Commissioner of Agriculture,
Hon. R. E. Rose,
State Chemist,
Tallahassee, Fla.

Gentlemen:

Replying to your joint communication under date of September 18, 1922, in the following language:

"I would be pleased to have an opinion from you as to the interpretation of Sections 2044, 2046, 2049, 2050, 5518, 5517, of the Revised General Statutes of 1920, in reference to the standard for mature citrus fruit, for interstate shipment, as quoted in full in "Food Inspection Decision No. 182," by the Hon. Henry C. Wallace, U. S. Secretary of Agriculture, page 10 of attached regulations approved August 10, 1922,"

I beg to say:

Section 2044, Revised General Statutes of Florida, pro-

vides for and authorizes the fixing of standards of purity of food products by the Commissioner of Agriculture of the State of Florida and State Chemist, and requires these officials to adopt the standards promulgated by the Secretary of Agriculture of the United States as adopted by the Board of Food and Drug Inspectors of the United States Department of Agriculture when such standards have been published, except where standards are fixed by statute.

Section 2046, Revised General Statutes of Florida, adopts definitions and authorizes the Commissioner of Agriculture, by and with the State Chemist, to establish Rules and Regulations in conformity with the Rules and Regulations formulated by the United States Department of Agriculture.

Section 2049, Revised General Statutes of Florida, prohibits the sale of, except on the trees, or the shipping of citrus fruits, which are immature, or otherwise unfit for consumption.

Section 2050, Revised General Statutes of Florida, prohibits the misbranding of wrappers containing citrus fruits.

Section 2051, Revised General Statutes of Florida, designates the tests which shall be applied and defines what shall be deemed to be mature fruit fit for consumption.

In so far as the enforcement of law by the State officials is concerned as to intra-state transactions, it is my opinion that they are bound by the provisions of Section 2051. The United States Department of Agriculture and the Board of Food and Drug Inspectors of the United States Department of Agriculture have adopted and promulgated a different standard to be applied to inter-state shipments. The standards adopted and promulgated by the United States Department of Agriculture and the Board of Food and Drug Inspectors of the United States Department of Agriculture as to the maturity of citrus fruits may be enforced by Federal officials in the Federal courts and by the State authorities.

Section 5517, Revised General Statutes of Florida, pro-

vides penalties for the violation of the provisions of the Pure Food and Drug Act as contained in Chapter 4, Title 2 of the Revised General Statutes of Florida, the same being Sections 2035 to 2046, inclusive.

Section 5518, Revised General Statutes of Florida, provides penalties for the violation of the provisions of Sections 2049 and 2050, and it is necessary to construe Section 2051 the same as if it constituted a part of Section 2049 when dealing with intra-state transactions, but when dealing with inter-state transactions, it is my opinion that the standard for immature citrus fruits, as adopted and promulgated by the Secretary of Agriculture of the United States, under date of September 20, 1921, and as approved and adopted by the Commissioner of Agriculture of the State of Florida, by and with the approval of the State Chemist, on August 10, 1922, supersedes the provisions of Section 2051, Revised General Statutes of Florida, and is the governing standard.

Yours very truly,

RIVERS BUFORD,

Attorney General.

BONDS—SCHOOL DISTRICT—APPROVAL.

Tallahassee, Fla., May 28, 1921.

*State Board of Education,
Tallahassee, Fla.*

Gentlemen:

I have carefully examined the transcript of record of the proceedings had authorizing the County Board of Public Instruction of Jackson County, Florida, to issue bonds of Special Tax School District Number 4 in said county in the sum of \$17,000.00.

I find that the election was called and conducted as required by law to authorize the said Board to issue such bonds, and that the said Board has done and performed all things necessary under the law incident to issuing such bonds.

I further find that the said bond issue in the sum of \$17,000.00 to mature 30 years after date, dated September 1, 1920, and bearing interest at the rate of 6% per annum, payable semi-annually, was approved and validated as a legal and binding obligation of said Special Tax School District Number 4 of Jackson County, Florida, by a final decree of the Honorable Circuit Court of Jackson County, Florida, on the 18th day of December, 1920.

The premises considered, it is my opinion that the said bond issue of Special Tax School District Number 4 of Jackson County, Florida, in the sum of \$17,000.00, dated September 1, 1920, bearing interest at the rate of 6% per annum, payable semi-annually, and maturing September 1, 1950, constitutes a valid and binding obligation on said Special Tax School District Number 4 of Jackson County, Florida, and, therefore, I approve the purchase of same.

Yours very truly,

RIVERS BUFORD,

Attorney General.

BONDS—SCHOOL DISTRICT—APPROVAL.

Tallahassee, Fla., May 28, 1921.

*State Board of Education,
Tallahassee, Fla.*

Gentlemen:

I have examined the transcript of record of the proceed-

ings had authorizing the County Board of Public Instruction of Citrus County, Florida, to issue bonds of Special Tax School District Number 3 of said county in the sum of \$20,000.00 in denominations of \$1,000.00 each, bearing interest at the rate of 6% per annum, payable semi-annually,—one of such bonds to mature each year beginning with the year 1921, and I find that such bond issue was authorized by an election duly called and held in Special Tax School District Number 3 of Citrus County, Florida, and that such bond issue has been approved and validated by a final decree of the Honorable Circuit Court of said county dated the 9th day of August, 1920.

It is, therefore, my opinion that the said bond issue in the sum of \$20,000.00 constitutes a legal and valid obligation of the said Special Tax School District, but I would respectfully call your attention to the fact that no data is attached to the transcript to show what the assessed valuation of this Special Tax School District is, and that for the Board of Public Instruction of such county to be able to retire these bonds in installments of \$1,000.00 per annum, beginning with the present year, a considerable assessed valuation would be required, and it is well to ascertain just what this is before purchasing these bonds.

Yours very truly,

RIVERS BUFORD,

Attorney General.

BONDS—SCHOOL DISTRICT—APPROVAL.

Tallahassee, Fla., July 5, 1921.

*State Board of Education,
Tallahassee, Fla.*

Gentlemen:

I have examined the certified copy of the transcript of

the record of the proceedings *in re*: Special Tax School District No. 9 of Okaloosa County, and the bond issue of said District in the sum of Eight Thousand Dollars, 6% semi-annual, thirty year bonds authorized by an election held in said District on the 15th day of January, A. D. 1921.

I find that the said election was held in accordance with the Constitution and the laws of the State of Florida, and that thereby the issue of the said bonds was duly authorized and that the Board of Public Instruction of the said Okaloosa County has performed all the duties required of said Board to legally issue the said bonds.

I find that the issue of said bonds has been duly and legally validated by a decree of the Honorable Circuit Court of the First Judicial Circuit of Florida, in and for Okaloosa County, dated the 18th day of February, A. D. 1921.

I find that the said bonds constitute a legal and valid obligation of the said Special Tax School District No. 9 of Okaloosa County, and when presented properly executed will constitute valid securities of said Special Tax School District, and I therefore approve the said bond issue.

Yours very truly,

RIVERS BUFORD,

Attorney General.

TAXATION—ASSESSMENT DRAINAGE TAXES.

Tallahassee, Fla., March 22, 1922.

*Hon. J. Stuart Lewis, Sec'y.,
Board of Commissioners of
Everglades Drainage District,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of the 21st instant, requesting my advice to the Board of Commissioners of Everglades Drainage District as to whether or not it is the duty of the several Tax Assessors of the counties which are wholly or in part within the Everglades Drainage District, under the provisions of Chapter 8412, Acts of 1921, to extend on the tax books for the year 1922, the assessment provided in said Chapter for the year 1921 as well as the assessment for the year 1922, I beg to say:

It is my opinion that under Chapter 8412, Acts of 1921, a valid assessment of one mill on the dollar was levied on all lands in the Everglades Drainage District for the year 1921 and subsequent years. At the time the Act was passed, it was not practical to enter the assessment on the tax roll for that year, and therefore, it appears that the assessment authorized by said Chapter was not entered upon the tax roll for the year 1921. This Chapter specifically provides: That except as provided in the said Chapter, the laws governing the assessment, collection and sale of lands for non-payment of Everglades Drainage District taxes shall be applicable to the benefit tax as provided in Chapter 8412. Therefore, it becomes the duty of the Assessors of counties within the affected District to pursue the same course which may be pursued in regard to the assessment of Everglades Drainage District taxes, which includes the authority to assess and extend on the

roll of the current year, taxes which were properly assessable or assessed and one year not extended on the roll of the previous year. It is, therefore, my opinion that the several Tax Assessors of the counties which are wholly, or in part, within the Everglades Drainage District are authorized to extend the one mill advalorem tax as provided for in Chapter 8412, Acts of 1921, for the year 1921 on their respective tax rolls for the year 1922, and also to extend upon said tax rolls such tax for the year 1922.

Yours very truly,

RIVERS BUFORD,

Attorney General.

UNOFFICIAL LETTERS OF THE ATTORNEY GENERAL

The following are some of the letters written in answer to the unofficial communications referred to heretofore in this report. These letters are of a general character and may be of some benefit to county officials and the public generally; therefore, they are incorporated herein.

TAXATION—OCCUPATIONAL LICENSE—WATER.

Tallahassee, Fla., January 10, 1921.

*Mr. M. M. Lord,
Sanford, Fla.*

Dear Sir:

Your letter of the 7th instant, in which you state that you are running a small pure water plant, bottling and handling water in five gallon bottles and distributing it in Sanford, was duly received, and I note that you desire to know whether or not you are required under the law to pay a license tax for doing such business.

Replying to your communication I beg to advise that the last paragraph of Section 56, Chapter 6421, Laws of Florida, Acts of 1915, provides that any person or persons, partnership, firm or company, or corporation, furnishing water for profit shall be construed to be a Water Company. It is provided, however, that persons having wells for private use, and who may furnish not more than 25 neighbors with water, shall be exempt from the provisions of this Act.

It will be seen, therefore, that a license tax is required of all water companies.

Yours very truly,
RIVERS BUFORD,
Attorney General.

TAXATION—OCCUPATIONAL LICENSES—
CONCERT HALLS.

Tallahassee, Fla., January 10, 1921.

Mr. H. B. Churchill,
Pass-a-Grille, Fla.

Dear Sir:

I have your letter of the 6th instant, in which you state that you have in connection with your hotel a pavilion, which you use for dances, card parties and as a place of amusement, and note that you state that the County Tax Collector informed you that if you held dances there and asked admission fees you would be required to pay a license tax.

Replying to your communication, I beg to advise that Section 49 of Chapter 6421, Laws of Florida, Acts of 1915, provides for the payment of a license tax for "concert halls, or places where entertainments or exhibitions are given, such as concerts, balls, dances, variety performances, musical or otherwise, for profit * * *." The State license in such cases is \$100 per annum, and the county would be 50% of that amount. The city could make an assessment up to as much as the amount of the county license, or if such city is organized under a Special Charter then the provisions of the Charter would govern.

It is my unofficial opinion that if your activities are covered by the provision of the law above quoted that you would be required to pay the license tax.

Yours very truly,

RIVERS BUFORD,

Attorney General.

STATE ROAD DEPARTMENT—CONTRACT FOR
BRIDGE.

Tallahassee, Fla., January 11th, 1921.

*Hon. Forrest Lake,
Chairman, State Road Department,
Tallahassee, Fla.*

Dear Sir:

I have examined the proposed contract between the State of Florida by the State Road Department and the Pensacola Ship Building Company, of Pensacola, Fla., for the construction of a steel truss bridge on concrete abutments over the Suwannee River on State Road No. 2, between Hamilton and Columbia Counties and beg to advise that when this contract is duly executed on behalf of the State and the Pensacola Ship Building Company, it will constitute a legal and binding instrument.

Yours very truly,
RIVERS BUFORD,
Attorney General.

BONDS—SCHOOL DISTRICT—VALIDATION.

Tallahassee, Fla., January 10th, 1921.

*Mr. Truman Plantz,
Warsaw, Ill.*

Dear Sir:

Your letter of the 27th ultimo in reply to a letter from this office under date of December 22nd, relating to an

issue of bonds of Special Tax School District No. 1 of Lee County, received, and note your observations of the law, as the same relates to the validation of such bonds.

Replying to your communication, I beg to advise that it is my opinion that the Act of 1915, Chapter 6868, is applicable to the bond issue in question and that validation proceedings, taken in accordance therewith, would be proper procedure for validating the bonds. The Act of 1913 as amended by Chapter 6967, Acts of 1915, is the law of this State upon the subject of authorizing Special Tax School Districts to issue bonds for the exclusive use of public free schools.

Yours very truly,

RIVERS BUFORD,

Attorney General.

AUDITOR, COUNTY—APPOINTMENT.

Tallahassee, Fla., January 13, 1921.

*Hon. W. R. Watkins,
Clerk Circuit Court,
Tampa, Fla.*

Dear Sir:

I have your letter of the 11th instant, in which you ask for my opinion as to whether or not the County Commissioners have authority to employ an Auditor under Section 3, Chapter 7334, Acts of 1917, and if so out of what fund would the County Commissioners pay such Auditor.

Replying to your communication I beg to advise that there is no provision in Chapter 7334, Laws of Florida, Acts of 1917, authorizing the Board of County Commissioners to employ a County Auditor.

Section 15 of Article 5 of the State Constitution provides, among other things, that "there shall be elected in each county * * * a Clerk of the Circuit Court, who shall also be Clerk of the County Court, except in counties where there are Criminal Courts, and of the Board of County Commissioners, and Recorder, and ex-officio Auditor of the County."

It is my opinion that there is no authority in law for the Board of County Commissioners to employ any person as County Auditor.

Thanking you for your kind wishes, I am,

Yours very truly,

RIVERS BUFORD,

Attorney General.

COUNTY JUDGE—CLERICAL DUTIES BY CLERK.

Tallahassee, Fla., January 17, 1921.

*Hon. T. L. Comer,
County Judge,
Kissimmee, Fla.*

Dear Sir:

Replying to your letter of January 14th beg to say that if a County Judge should be detained from his office on account of sickness, or other legal excuse, the proper course would be for him to leave a regular deputy or clerk in his office to attend to matters of this character. Marriage licenses should be left in the office signed in blank, but could only be issued upon the proof as contemplated by Chapter 7828 of the laws of Florida.

Chapter 7828 was passed at my suggestion to prevent the practice which obtained in some counties whereby

County Judges signed batches of marriage licenses in blank and sent them out to various parts of the county to be issued when called for at such places. This practice resulted in a great convenience for people who were under age and who could not have procured license upon application to the County Judge. I do not think it was the intention of the Act to prevent the issuing of a license under proper conditions, but simply to so safeguard the issuing that irresponsible persons cannot procure licenses without the knowledge and consent of parents or guardians.

It is my opinion that a duly authorized Clerk in your office may perform any clerical duty which you yourself can perform, and the only reason that such Clerk could not sign the license is that the statute requires that it be signed by the hand of the County Judge.

Yours very truly,

RIVERS BUFORD,

Attorney General.

STATE LIVE STOCK SANITARY BOARD—
QUARANTINES.

Tallahassee, Fla., January 17, 1921.

*Dr. J. W. DeMilly,
State Veterinarian,
Tallahassee, Fla.*

Dear Sir:

Yours of the 14th instant has been received.

The substance of your inquiry, as I understand it, is whether or not a railroad corporation which has heretofore violated the provisions of Section 17 of Chapter 7345, Laws of Florida, Acts of 1917, is liable to the penalty im-

posed by said Section upon "any person" who should violate the provisions thereof.

Replying to your inquiry I beg to advise that, in my opinion, the word *person* as used in the cited section includes corporations, and that a corporation which has done any act that is declared by said section to be illegal is no less liable to prosecution and punishment therefor than a natural person would be for a like act.

The provisions of said section are now as effective against corporations that have violated them as they will be against corporations or natural persons who may violate them after the Revised General Statutes, into which they have been carried, shall go into effect.

Yours very truly,

RIVERS BUFORD,

Attorney General.

LANDS—POSTING.

Tallahassee, Fla., January 19th, 1921.

*Mr. William G. Talley,
Care Pine Oak Stock Farms,
Lakeland, Fla.*

Dear Sir:

Replying to your letter of January 17th, I beg to say that signs bearing the word "Posted," or in fact, bearing any other inscription, are entirely worthless when placed upon open lands. A trespass which is forbidden by the statute can be prosecuted as well without this notice as with it, and such trespass would necessarily consist of an act which is detrimental to the freehold and such acts as

hunting, fishing, or casually passing over the land, would not constitute criminal offenses.

Yours very truly,
RIVERS BUFORD,
Attorney General.

TAX COLLECTOR—DUTIES.

Tallahassee ,Fla., January 20th, 1921.

*Mr. Horace H. Smith,
Booth No. 12, American National Bank Building,
Wichita Falls, Texas.*

Dear Sir:

I am in receipt of your letter of the 16th instant with reference to taxes on property which you own in this State. I note that you say the Tax Collector did not give you a statement of a special drainage tax that was assessed against your property and ask what protection a non-resident has, if the Collector fails or refuses to give information when requested.

Replying to your communication, I beg to advise that there is no law in this State requiring Tax Collectors to give such information as mentioned in your letter. It is just a question of whether he will be sufficiently courteous and accomodating to do so. I suggest that you write the Clerk of the Court of the county in which your land is situated, asking him to inform you if there is any drainage tax certificate held by him against your property, or whether there is any such certificate held by individuals.

Yours very truly,
RIVERS BUFORD,
Attorney General.

BOARD OF PUBLIC INSTRUCTION—BORROWING.

Tallahassee, Fla., January 26th, 1921.

*Hon. T. C. Sims,
Madison, Fla.*

Dear Sir:

I am in receipt of your letter of the 25th instant in which you ask if a Board of Public Instruction has borrowed 80% of assessed valuation of taxes for 1920 as authorized by law, may borrow on the taxes assessed or to be assessed for 1921, not exceeding 80%, before the previous amount borrowed in 1920 be paid.

Replying to your communication, I beg to advise that under the provisions of Chapter 6828, Laws of Florida, Acts of 1915, it is provided that where a School Board borrows in any one year, an amount not exceeding 80%, such sums shall be paid in full before the Board shall be authorized to borrow on the estimate for any succeeding year. Under this provision of the law, the School Board would not be authorized under the circumstances mentioned in your letter to borrow on the taxes assessed or to be assessed for 1921.

Yours very truly,
RIVERS BUFORD,
Attorney General.

COUNTY FUNDS—TRANSFERS.

Tallahassee, Fla., January 27th, 1921.

*Mr. D. H. Ground,
Chairman, Board of County Commissioners,
Fernandina, Fla.*

Dear Sir:

I am in receipt of your letter of the 25th instant and note what you have to say therein, also the questions which you desire me to advise you upon.

Replying to this communication, I beg to advise that I note that you say the County General Fund, and Fine and Forfeiture Fund have more cash on hand at present than is needed. Without going into detail as to the question of obtaining loans from bank of funds to be used on roads and bridges, I beg to say that it seems to me that under the provisions of Section 3 of Chapter 6814, Laws of Florida, Acts of 1915, your Board might avail itself of the surplus in the General Fund and Fine and Forfeiture Fund to an extent sufficient to relieve your present situation with reference to roads and bridges.

Yours very truly,

RIVERS BUFORD,

Attorney General.

NOTICES—PUBLICATION—DESIGNATION
OF PAPER.

Tallahassee, Fla., January 28th, 1921.

*Hon. W. L. Smith,
Williston, Fla.*

My dear Sir:

Replying to your letter of the 26th instant, I beg to say that under the provisions of several sections of the statutory law of Florida, it becomes the duty of the Board of County Commissioners to publish certain notices and when such duty devolves upon the Board of County Commissioners, it becomes the duty of the Board to select and designate the newspaper in which the publication is made and the newspaper so designated is usually called (probably for the lack of a better word), "County Organ," although there is no reason why the County Commissioners cannot divide the county printing between several newspapers in the county, but in some cases, it is necessary that the minutes show that a certain paper has been designated for the publication of the notice. An instance of this will be found in Section 558 of the General Statutes of Florida and this section would not be complied with by a general order to the effect that all county printing should be done by one particular paper, but in the matter referred to in this section, the order must be made especially designating a particular paper for the publication of the notices and the choice thereof is entirely within the discretion of the County Commissioners.

Yours very truly,
RIVERS BUFORD,
Attorney General.

MOTOR VEHICLES—LICENSE—CHAUFFEUR.

Tallahassee, Fla., February 5, 1921.

*Hon. Roland Curry, Sheriff,
Key West, Fla.*

Dear Sir:

Replying to your letter of February 3rd, I beg to say that in my opinion any person who drives an automobile or truck for hire, whether such driver be the owner of the vehicle or not and whether such vehicle is a taxi driven for fares, a public dray or a free delivery, such driver must have chauffeur's license. In other words, if the driver drives for hire it is immaterial whether he is paid by the month or earns his pay with his own car in fares, he becomes liable as a chauffeur. The purpose of the law is to protect the public against incompetent, reckless or careless drivers.

This rule does not apply however, to the man who drives his own car for pleasure or merely as an incident to his business and who does not earn money or receive money for driving his car, or the use of his car. I think this fully explains the points about which you asked to be advised.

Yours very truly,
RIVERS BUFORD,
Attorney General.

GAME WARDEN—FEES.

Tallahassee, Fla., February 7, 1921.

*Hon. Julian L. Hazard,
County Judge,
Tampa, Fla.*

Dear Judge:

I am in receipt of your letter of February 5th. Your construction of the law as therein set forth in my opinion is correct. The County Game Warden is entitled to no further fees from license issued by the County Judge.

The fees referred to in Section 1795, Revised General Statutes, are the same as those provided for the Game Warden under Section 1799, Revised General Statutes, and you will of course be governed by the provisions thereof.

Yours very truly,

RIVERS BUFORD,

Attorney General.

ATTORNEY GENERAL—USE OF NAME IN SUIT.

Tallahassee, Fla., February 9, 1921.

*Hon. A. D. Carmichael,
Chipley, Fla.*

Dear Sir:

Replying to your communication of the 8th inst., enclosing the communication from Hon. G. A. Register under date of the 4th inst., I beg to say that in my opinion, Chapter 8267, Acts of the Legislature of 1919, will be held valid.

I wish to say, however, that I have not traced it back through the journals, but assume that the record of its passage is regular. Our courts have repeatedly held that one can not go behind the record of the passage of an Act and show that the proposed legislation was not duly advertised. Therefore, when the record is silent the presumption is conclusive, although it may be entirely untrue, that the required notice was duly published. I consider this an unjust rule, but it exists beyond a question.

There is nothing in the Constitution which is in conflict with the Act in so far as the method of selecting the officer is concerned, and in fact the method which obtains in most of the larger cities for the selection of the heads of the police department is, that they are appointed either by the City Council or the Mayor.

Therefore, as I can not conscientiously say in my opinion Mr. Register is entitled to hold the office of Town Marshal of the Town of Graceville, I think it would be wrong for me to allow my name, as Attorney General, to be used for the purpose of bringing a suit for which I feel that there is no foundation in law, and therefore, I will have to decline.

With kindest personal regards, I am,

Yours very truly,

RIVERS BUFORD,

Attorney General.

GAME—HUNTING LICENSES—FEES COUNTY
JUDGE.

Tallahassee, Fla., February 10, 1921.

*Hon. Jno. U. Bird,
County Judge,
Clearwater, Fla.*

Dear Judge:

Replying to your letter of February 7th, beg to advise that after deducting your fees you should deposit the balance of money arising from hunting licenses in the County Depository to the credit of the School Fund. The provisions of Chapter 6969 of the Acts of 1915, which require the County Judge to pay certain fees to the Game Warden is repealed by law as embodied in the Revised General Statutes, and under the present law the County Judge should pay no fees to the Game Warden.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SHERIFF—FEES.

Tallahassee, Fla., February 11, 1921.

*Hon. W. B. Gainer,
County Commissioner,
Fountain, Fla.*

Dear Sir:

Replying to your letter of February 10th, beg to say that it is my opinion that a Sheriff is not entitled to reim-

bursement from the county for money which he offers and pays as a reward for apprehension of a person charged with crime. He would be entitled to his mileage for himself and conveying prisoner in such case, which should be computed under the provisions of Section 2893, Revised General Statutes, to arrive at the proper compensation for mileage travel beyond the State of Florida, and as in any other case for the mileage traveled within the State of Florida.

Yours very truly,

RIVERS BUFORD,

Attorney General.

GAME WARDEN—FEES.

Tallahassee, Fla., February 18, 1921.

Mr. Fred George,

Rt. "C," Tallahassee, Fla.

Dear Sir:

Replying to your letter of the 14th inst., with reference to the question of the salary of the Game Warden, I beg to advise that up to the time of the taking effect of the Revised General Statutes, Game Wardens were allowed compensation as provided for in Section 25 of Chapter 6969, Laws of Florida, Acts of 1915. Section 28 of the same Chapter, which authorized the Board of County Commissioners of the respective counties to fix the salary of the Game Warden was declared unconstitutional in the case of *State ex rel. Clarkson vs. Phillips*, 70 Fla. 340.

Since the Revised General Statutes of Florida, 1920, became effective the compensation of Game Warden is fixed by Section 1799 thereof, which provides that each County Game Warden shall be allowed and paid for making ar-

rests for violation of the game law the same fees as Sheriffs, and the same mileage for conveying prisoners; the same to be taxed as costs in case of conviction, but no fee or mileage shall be allowed in case of acquittal. In addition to this, it also provides that each receive and be paid an amount equal to one-third of all fines and penalties collected in the county imposed for violations of the game law in the cases in which he or his deputies furnish the evidence upon which conviction is had.

Yours very truly,

RIVERS BUFORD,

Attorney General.

STATE BOARD OF HEALTH—EXPENSES—
NEWSPAPER ADVERTISING.

Tallahassee, Fla., February 22, 1921.

*Dr. Ralph N. Greene,
State Health Officer,
Jacksonville, Fla.*

Dear Sir:

Replying to your letter of the 11th inst., which I found on my desk upon returning from a ten days absence, I beg to say:

It is my opinion that under the authority vested in your Honorable Board by Sections 1997 and 1998, Revised General Statutes of Florida, you may properly incur such necessary expense as may be incident to a campaign to control venereal diseases, or any other communicable diseases; that you may include in this campaign such newspaper advertising as is necessary for the conduct of the campaign,

and that the costs thereof would be a proper expenditure of the State Board of Health funds.

Yours very truly,

RIVERS BUFORD,

Attorney General.

GAME WARDEN—FEES.

Tallahassee, Fla., February 22, 1921.

*Hon. A. G. McQuagge,
Clerk Circuit Court,
Vernon, Fla.*

Dear Sir:

Replying to your communication of the 14th inst., I beg to say that in my opinion a Game Warden is only entitled to receive the fees provided under Section 1799, Revised General Statutes of Florida, and this Section provides the manner in which the fee shall be paid. The Game Warden is not entitled under the present law to receive any part of the money derived from the sale of licenses. Section 1795, Revised General Statutes of Florida, provides a salary to be fixed by the Board of County Commissioners to be paid to the Game Warden. This Section is brought forward and also Section 28 of Chapter 6969, Acts of 1915, and was held invalid by the Supreme Court in the case of *State ex rel. Clarkson vs. Phillips*, and should, therefore be ignored.

Yours very truly,

RIVERS BUFORD,

Attorney General.

CIRCUIT COURT—RECORDS.

Tallahassee, Fla., February 23, 1921.

*Hon. T. C. Smyth,
Clerk Circuit Court,
Tavares, Fla.*

Dear Sir:

Replying to your letter of February 21st, I beg to say that Section 3076, Revised General Statutes of Florida, which was originally a part of Chapter 7335, Acts of 1917, in my opinion does not change the rule which has obtained requiring orders of court in common law actions to be recorded in the Circuit Court Minute Book.

It is my view that the first paragraph of this section means, that the Clerk shall keep a record in the Minute Book of all proceedings of the Circuit Court, which would include all orders in common law cases made and signed by the Judge, either in or out of Term time, and also all orders made orally by the Judge in Term.

It is my opinion that the Legislature by the words, "In Term" did not intend to limit the record of the proceedings of the Circuit Court in the Minute Books to those orders, or proceedings, which occurred in Term, but by these words, "In Term," intended to direct the Clerk to record in the Minute Book all proceedings of the Judge in Term, whether such proceedings should occur by oral order delivered from the bench, or by signed written order.

Yours very truly,

RIVERS BUFORD,

Attorney General.

ATTORNEY GENERAL—OPINION ON REQUEST OF
OFFICER CONCERNED.

Tallahassee, Fla., February 28, 1921.

*Hon. T. H. Wicker,
Coleman, Fla.*

Dear Judge:

I am in receipt of your letter of the 26th inst., and I am very sorry that I cannot give you the advise which you request in this letter.

Under the Constitution and Laws of Florida, it is not the duty of the Attorney General to advise County Officials concerning the discharge of their respective duties, but it is the practice of this office to do so and that practice shall obtain as long as I am Attorney General,—but, we cannot assume to advise one official or the head of one department concerning the performance of the duties of another official or the head of another department, because this office has no jurisdiction to control the conduct of any official, and the advice is only given upon the assumption that the official affected desires to be governed by the opinion of this office.

All county officials are under the supervision of the Governor, and of course if complaint is made to him and he requests an opinion from this office it will be promptly rendered to him.

I think that you can understand that this is the proper attitude for me to take. You would certainly not appreciate me advising a constable, or some other citizen, of your county as to how you should perform the duties of your office, and you would not expect me to assume to do so except upon a request from you or from the Governor.

Yours very truly,

RIVERS BUFORD,

Attorney General.

BOND TRUSTEES—COMPENSATION.

Tallahassee, Fla., March 1, 1921.

*Hon. J. Will Yon,
State Auditor,
Tallahassee, Fla.*

Dear Sir:

Subject: County Bonds.

Replying to your communication of this date asking my opinion as to the proper course to be pursued by Bond Trustees, County Commissioners and yourself, with reference to the proceeds realized from the sale of county bonds, I beg to say:

In my opinion Section 1541, Revised General Statutes, contemplates the entire amount of money received from the sale of bonds, and that the word, "proceeds," means the gross amount of money realized.

It is my opinion that it would not be legal for Trustees to compensate themselves for any services out of the fund constituting the proceeds of the sale of bonds, but that their compensation must be paid from the County Treasury, and before it can be so paid such payment must be contemplated in the budget authorized under Section 1517 of the Revised General Statutes. If the payment of such compensation has not been taken into consideration and the necessary funds therefor have not been provided by tax levy, then the necessary amount should be taken care of under the subsequent budget and levy.

Replying to the last paragraph of your letter I beg to say that in my opinion, the duties of the State Auditor in connection with such matters cease when he has made a report of his findings to the Governor, and I find no authority vests in the office of State Auditor to require officials to do anything more than to submit their books and ac-

counts for examination, and to render to the State Auditor such information as may be required in explanation of the same. I, therefore, advise, that it is my opinion that the matter referred to in your letter is the proper subject of a report to the Governor, and that the course to be pursued in properly disposing of the condition is entirely within the province of his office.

Yours very truly,
RIVERS BUFORD,
Attorney General.

BONDS—PROCEEDS—EXPENDITURES.

Tallahassee, Fla., March 2, 1921.

*Hon. G. C. Geiger,
Clerk Circuit Court,
Bunnell, Fla.*

Dear Sir:

It is my opinion that the proceeds of a county or district bond issue may only be used for the purposes for which the bonds were issued, and that such proceeds cannot be used to pay obligations incurred in litigation. It is my opinion that it is illegal for Trustees to be paid their compensation out of the proceeds of the bond issue.

It is my opinion that attorney's fees incurred by the Board of County Commissioners either in prosecuting or defending suits in behalf of the county should be paid from the General Revenue Fund, except in those cases where the statute provides that it shall be paid from the Fine and Forfeiture Fund.

Yours very truly,
RIVERS BUFORD,
Attorney General.

DEPOSITORIES—SECURITY TO BOND TRUSTEES.

Tallahassee, Fla., March 5, 1921.

*Hon. J. Will Yon,
State Auditor,
Capitol.*

Dear Sir:

I have your inquiry of the 4th instant, as follows:

“Section 1541 of the Revised General Statutes provides that proceeds of bond sales shall be turned over to the Board of Bond Trustees. The law also requires that money collected to meet interest and sinking shall be likewise turned over to the Bond Trustees.

“Should the Bond Trustees desire to carry this money as deposits in banks, would such banks have to qualify as depositories for this particular money under Section 1560 of the Revised General Statutes, or is it optional, or merely within the discretion of the Bond Trustees, as to whether or not they require a guarantee from the banks in the form of collateral?”

After examining the statutes cited by you, I am of the opinion that Sections 1559 to 1567, both inclusive, of Revised General Statutes, in no wise relate to funds paid to Bond Trustees under the provisions of Sections 1541 and 1545, and that such funds, if deposited in a qualified depository, would not be secured by such depository's qualifying bond.

Section 1545 of Revised General Statutes prescribes the duty of County Bond Trustees with reference to depositing in bank money in their custody as such Trustees, and in what character of banks such funds shall be deposited.

Other than as so limited, the Trustees are free to deposit such money in any bank they deem fit; as the county is secured by their bonds, it is entirely optional with them

whether they require security from the bank or not, since it would be for their benefit and not that of the county.

Yours very truly,

RIVERS BUFORD,
Attorney General.

STATE ROAD DEPARTMENT—CONTRACT WITH
COLUMBIA COUNTY.

Tallahassee, Fla., March 8th, 1921.

*Hon. H. B. Phillips, Chairman,
State Road Department,
Tallahassee, Fla.*

Dear Sir:

Replying to your oral request of my opinion as to the legality of the agreement entered into between the Board of County Commissioners of Columbia County, Florida, and the State Road Department, wherein the said Board of County Commissioners transferred to the said State Road Department \$400,000.00 of bonds issued by the County of Columbia, for the purpose of constructing a public highway through the County of Columbia of vitrified brick or asphalt, said highway to extend east and west from the Suwannee County line to the Baker County line, and from the bridge across the Suwannee River at White Springs to Dunnagon's Bridge over the Sante Fe River, I beg to advise that I have examined the several communications and resolution of the Board of County Commissioners of Columbia County, which you submitted to me upon this subject, and I find therefrom the following conditions:

The opinion of Mr. John C. Thompson, Attorney and Counsellor at Law, No. 120 Broadway, New York City,

upon the authority of the Board of County Commissioners and the State Road Department to enter into the agreement under consideration is to the effect, that while such a transfer of the bonds in question to the said State Road Department might be held to be legal, yet it is his opinion that further judicial or legislative action should be taken in order to determine the question.

The Board of County Commissioners in its resolution adopted May 4, 1920, transferring to the State Road Department the \$400,000.00 of the said bonds evidently had in mind, and followed the opinion of Mr. Thompson in adopting this resolution, because the said Board provided therein that the said transfer of bonds was "to be taken and held by the said State Road Department subject to legislative action approving, ratifying and validating such transfer and acceptance."

This resolution of the Board of County Commissioners adopted May 4, 1920, is the resolution which forms the basis for the agreement between the State Road Department and the Board of County Commissioners of Columbia County, transferring the \$400,000.00 of bonds to the State Road Department. Therefore, the holding and accepting of the bonds by the State Road Department is in my opinion, subject to that provision of the resolution above mentioned, which provides that the said bonds was "to be taken and held by said State Road Department subject to legislative action approving, ratifying and validating such transfer and acceptance." This being a condition subsequent affecting the whole transaction renders the transfer ineffective until such time as the conditions are complied with.

Should the action of the Board of County Commissioners and the State Road Department be ratified and validated in accordance with the resolution above mentioned, then of course the agreement between the said Board of County Commissioners and the said State Road Department would be binding. It seems to me that the transaction is in such

a condition at this time that nothing can be done until legislative action has been taken in regard thereto.

I am returning all papers herewith.

Yours very truly,

RIVERS BUFORD,

Attorney General.

TAXATION—OCCUPATIONAL LICENSE—HOTELS.

Tallahassee, Fla., March 10, 1921.

*Hon. William Fisher,
County Solicitor,
Pensacola, Fla.*

Dear Sir:

I am in receipt of your letter of the 4th inst., which arrived at my office during my absence on a trip to Tennessee, and in replying thereto I beg to say, it is my opinion that the provisions of Section 8, Chapter 6952, Acts of 1915, supersede Section 15, Chapter 6421, Acts of 1913.

The two Acts certainly conflict one with the other and Section 33 of Chapter 6952 repeals all previous conflicting Acts.

It is true that both provisions are brought forward and reenacted in the adoption of the Revised General Statutes, but it is my opinion that this does not make the enforcement of both provisions obligatory, and it is my opinion that Section 2127 of the Revised General Statutes supersedes Section 842, Revised General Statutes.

Having reached this conclusion it is my opinion that the payment by the hotel proprietor of a fee for license required by the 1915 Act would absolve him from the payment of an occupational tax required by the 1913 Act.

Yours very truly,

RIVERS BUFORD,

Attorney General.

ATTORNEY GENERAL—ADVICE TO OFFICER
CONCERNED.

Tallahassee, Fla., March 10, 1921.

Hon. W. T. Collins,
Deputy Sheriff,
Umatilla, Fla.

Dear Sir:

I am in receipt of your letter of the 8th inst., and in reply thereto beg to say it would not be proper for me to advise a Deputy as to the performance of the duties devolving upon him, because the office of Attorney General has no jurisdiction over any county officer, and therefore, it is not proper for the Attorney General to render an opinion as to the performance of the duties devolving upon any county officer, unless requested to do so by the Governor or the Chief Officer, whose duty is involved.

I am quite sure that you did not mean any reflection upon your Sheriff by writing to me direct asking my advice in this matter, but it would be a reflection upon him for me to assume to advise you, as your instructions should come from the Sheriff, and if he wishes the affairs of his office to be governed by my advice it is proper for me to wait until he requests the same.

I shall be glad at any time to advise the Sheriff of your county or any other county upon any matter involved in the performance of the duties of his office.

Yours very truly,

RIVERS BUFORD,

Attorney General.

TAXATION—ASSESSMENT—COTTON IN
STORAGE.

Tallahassee, Fla., March 16, 1921.

*Hon. J. R. Cooksey, Jr.,
Tax Assessor,
Monticello, Fla.*

Dear Sir:

Replying to your letter of the 15th, I beg to advise that it is my opinion that cotton in storage in your county, which was bought and stored on or before January 1st, is property upon which it is proper to assess State and county taxes.

I also advise you that in my opinion it is the duty of the Tax Assessor to assess such property as mortgages, stocks and bonds when it comes to his knowledge that the same are owned and held within his county. In this connection, I would advise that when you have ascertained that such property is so held, you then advise the persons to be assessed that you have procured such knowledge and it is your intention to assess the same according to the knowledge and information so received, unless they wish to make a sworn return either admitting or denying the ownership and the value of this property. Let them understand that the affidavit is not a matter of form, but that it carries with it the serious obligation of a solemn oath.

Yours very truly,

RIVERS BUFORD,

Attorney General.

GAME WARDEN—APPOINTMENT AS DEPUTY
SHERIFF.

Tallahassee, Fla., March 17, 1921.

*Mr. Cyrus C. Tannton,
Bristol, Fla.*

Dear Sir:

In my opinion, you while holding a commission as Game Warden of Liberty County, could also be appointed and act as Deputy Sheriff.

Of course, when serving as Game Warden your fees would have to be controlled by the statutes pertaining thereto.

Yours very truly,
RIVERS BUFORD,
Attorney General.

ROADS AND BRIDGES—SPECIAL DISTRICTS—
EXPENDITURES IN DISTRICT.

Tallahassee, Fla., March 23, 1921.

*Hon. T. R. Chaires,
County Commissioner, District No. 4,
Old Town, Fla*

Dear Sir:

Replying to your letter of the 21st inst., beg to say that Section 1650 of the Revised General Statutes directs how the money derived from Special Taxes assessed and collected in Special Tax Road and Bridge Districts shall be

disbursed, and places the duty upon the Board of County Commissioners to expend such money all in the district where the same was assessed and collected.

This rule will not apply, however, to a general county assessment for road and bridge purposes. The Special Tax Road District would not have any effect upon the location of the expenditure of moneys derived and collected under the general assessment for road and bridge purposes.

To make myself clear, will say that if money is collected from a general levy throughout the county for road and bridge purposes, such money may be spent at any place in the county which may be deemed proper by the Board of County Commissioners, and no district would have the legal right to claim the use of the money derived under the general assessment in such district, but the money from a special assessment in a Special Tax Road District must be expended in that district.

Yours very truly,

RIVERS BUFORD,

Attorney General.

LEGISLATOR—MAY BE MUNICIPAL JUDGE.

Tallahassee, Fla., March 30, 1921.

*Hon. C. H. Kennerly,
Palatka, Fla.*

Dear Sir:

Replying to your letter of March 28th, beg to say that in my opinion, the Constitution does not prohibit the Municipal Judge of any city or town being elected a member of the Legislature, or to any other State office.

I do not think that the fact that a person happens to be

a member of the Legislature would affect his eligibility to be elected Municipal Judge.

Yours very truly,

RIVERS BUFORD,

Attorney General.

COUNTY COMMISSIONERS—EXPENDITURES.
OVER \$300.00.

Tallahassee, Fla., April 5, 1921.

Hon. W. H. Walker,
Bristol, Fla.

Dear Sir:

Replying to your letter of the 4th instant with reference to amount due the Parks Live Stock Company, beg to say:

Parks Live Stock Company holds two separate papers showing an indebtedness of Three Hundred Dollars on two separate mule trades. Therefore, Parks Live Stock Company is in a position to enforce the payment of each of these claims. In fact, each of these items stands upon the same basis as if only one of the trades had been made with the Parks Live Stock Company, and the other trade had been made with some other company or person.

Where it becomes necessary to trade mules for county purposes, it is not practical to comply with the law with reference to advertising for bids, and therefore the County Commissioners should be careful to so conduct their business that no cash expenditure in any one trade will exceed Three Hundred Dollars, and when this is done it is my opinion that the difference in such trades can be properly paid by the County Commissioners, and that you would

be within your legal rights to sign and deliver the warrants.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SHELL FISH COMMISSIONER—RETURN OF
FUNDS TO FLORIDA CO-OPERATIVE COLONY.

Tallahassee, Fla., April 6, 1921.

*Hon. J. Asakiah Williams,
Shell Fish Commissioner,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of the 6th inst., relative to money received from Florida Co-operative Colony, beg to advise that the plan which you suggest for the return of this money meets with my approval, except in this. I think that you should not direct the bank to place the money to the credit of the individual shown on the list, because you have no authority to direct such distribution of the money. The distribution should be a matter to be properly obtained by the individual and the list which you would attach to the check would be sufficient information for you to furnish along that line. The money represented by the check signed by J. J. Abbott personally should be returned to J. J. Abbott.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SHERIFF—FEES—PER DIEM IN COURTS.

Tallahassee, Fla., April 9th, 1921.

*Hon. W. W. Clark,
Milton, Fla.*

Dear Sir:

Replying to your letter of the 8th inst., beg to say:

I have heretofore advised county officials as to my interpretation of Section 4, Chapter 7886, Laws of Florida, Acts of 1919, which is, that a Sheriff, Deputy Sheriff, or Constable is entitled to receive \$4.00 per day as compensation for attendance upon any court. It is my opinion that it would make no difference whether a case was tried or not. If the court is open, therefore the attendance of the officer is required; under the law he is entitled to the compensation prescribed by statute. Where more than one case is tried or where the court is open for the consideration of more than one case, the fee should be pro-rated between such cases.

Yours very truly,
RIVERS BUFORD,
Attorney General.

STATE ATTORNEY—TRANSFER—EXPENSES.

Tallahassee, Fla., April 12, 1921.

*Hon. Jos. H. Jones,
Orlando, Fla.*

My dear Friend:

It is my opinion that when a State's Attorney is transferred from the circuit in which he was appointed to of-

ficiate to some other circuit, that he is only entitled to receive the amount actually paid out by him as expenses incident to such transfer in addition to his regular salary from the State.

It is my opinion that Section 3020, Revised General Statutes of Florida, does not apply to a transferred State's Attorney, but only applies to an Attorney of the bar who is appointed as acting State's Attorney.

I have been transferred probably more often than any other State's Attorney during the past ten years and have never received any additional compensation, and have always been governed by the opinion that I was only entitled to actual expenses.

Yours very truly,
RIVERS BUFORD,
Attorney General.

PRISONER—COMMUTATION OF SENTENCE.

Tallahassee, Fla., April 13, 1921.

*Hon. A. D. McNeill,
Jacksonville Fla.*

Dear Sir:

Replying to your letter of April 12th, will say:

The order made by Governor Sidney J. Catts on August 27, 1920, granting commutation of sentence to Mallory Riggins was without any authority in law, and no commutation should have been issued by the Clerk of the Circuit Court upon that order.

The commutation issued upon this order is attested by the Clerk in the name of Judge George Couper Gibbs as Judge.

I suggest that you make application to Judge Gibbs for an order to set aside and vacate the order of commutation upon the ground that the same is based upon an invalid executive order and not upon the judgment of the court, nor upon any act originating from any competent authority.

When Judge Gibbs has made such an order send me a copy thereof and I will procure an order for Riggins to be delivered by the prison authorities to the Sheriff of Duval County upon demand of the Sheriff. When he shall have been re-delivered to the Sheriff of Duval County, I suggest that you make application to the Governor of Florida for death warrant. It will then be up to Riggins, or his attorneys, to take such action as they may deem expedient to interrupt the action of the law.

Yours very truly,

RIVERS BUFORD,

Attorney General.

CLERK CIRCUIT COURT—COMPENSATION AS
CLERK TO COUNTY COMMISSIONERS.

Tallahassee, Fla., April 23, 1921.

*Hon. L. L. Pararo,
Clerk Circuit Court,
Crawfordville, Fla.*

Dear Sir:

Replying to your letter of the 22nd, beg to say, that the compensation to be paid the Clerk of the Circuit Court by the Board of County Commissioners as Clerk of said Board is a matter resting entirely within the discretion of the Board of County Commissioners of each county, and such

compensation should be based upon the services required of such clerk, because these duties vary in different counties and what what would be fair compensation in one county probably would not be in another. It would not be possible for me to say whether the compensation paid you is excessive or not. I can only assume that the County Commissioners are fair to you and fair to the people who elected them to serve as the Board, and that they would not impose upon you to gratify the caprice of some of the citizens, neither should they place an unnecessary burden upon the tax payers to gratify the desire of any other official.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SHELL FISH COMMISSIONER—TRAVELING
EXPENSES.

Tallahassee, Fla., April 26, 1921.

*Hon. T. R. Hodges,
Shell Fish Commissioner,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of the 25th inst., beg to say:

It is my opinion that under the provisions of Section 1232, Revised General Statutes of Florida, the Shell Fish Commissioner is limited to the sum of \$800.00 per annum for traveling expenses, and that such traveling expenses must be paid along with his salary from the State Treasury.

I find nothing in this section which would warrant the

assumption that the Shell Fish Commissioner has authority to approve his own expense bills and pay them from the Shell Fish Fund.

If such authority exists it is granted by some other section of the law, and I have only considered the section upon which you ask to be advised.

Yours very truly,

RIVERS BUFORD,

Attorney General.

COUNTY SUPERINTENDENT PUBLIC INSTRUCTION—TEACHING.

Tallahassee, Fla., April 26, 1921.

*Hon. Carl E. Royer,
LaBelle, Fla.*

Dear Sir:

Replying to your letter of April 22nd, beg to say there is no statute in this State prohibiting a County Superintendent of Public Instruction occupying the position of principal of a High School within the county, but the State Superintendent of Public Instruction tells me it is against the rule of the State Board of Education for a Superintendent of Public Instruction to enter into a contract to teach at all and that he will only be allowed to teach when he substitutes for a teacher in case of an emergency.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SHELL FISH COMMISSIONER—TRAVELING
EXPENSES.

Tallahassee, Fla., April 28, 1921.

*Hon. T. R. Hodges,
Shell Fish Commissioner,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of the 27th inst., beg to say that it is my opinion that Section 1277 does not contemplate the payment of the salary or the traveling expenses of the Shell Fish Commissioner, and therefore, it does not change my construction of Section 1232, as handed you in my letter of April 26th.

Yours very truly,
RIVERS BUFORD,
Attorney General.

COUNTY SUPERINTENDENT PUBLIC INSTRU-
TION—SALARY FROM GENERAL REVENUE
FUND.

Tallahassee, Fla., May 2, 1921.

*Hon. Ben Shepard,
Clerk Circuit Court,
Miami, Fla.*

Dear Sir:

Replying to your letter of April 30th, beg to say:
The salary of County Superintendent of Public Instruc-

tion should be paid from the General Revenue Fund of the county.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SHELL FISH COMMISSIONER—DUTIES AND
POWERS.

Tallahassee, Fla., May 7, 1921.

*Hon. S. J. Gunn, Acting Chairman,
Special Joint Investigating Committee,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of the 6th instant, asking for my opinion upon the three questions propounded in said letter, to-wit:

“What authority is vested in the Shell Fish Commissioner to purchase supplies and other property and to dispose of property coming into his possession?

“In how far is his power along this line limited by the necessity of first having the approval of the Commissioner of Agriculture?

“To what extent may the Shell Fish Commissioner purchase groceries, necessities and luxuries for himself and assistants, at the expense of the State, without having the authority from the Commissioner of Agriculture to make such purchases?”

I beg to say that I find in the Revised General Statutes of Florida, 1920, there are conflicting sections. Section 1236 was originally Section 7 of Chapter 6532, Acts of 1913, and provides in effect that all accounts, claims and

bills of every nature against the Shell Fish industry must be approved by the Commissioner of Agriculture. Section 1277, however, being originally Section 22 of Chapter 6877, Acts of 1915, supersedes this provision and vests such authority in the Shell Fish Commissioner. Therefore, these bills may all be paid under the present law without being referred to the Commissioner of Agriculture.

Section 1233 which was originally Section 4 of Chapter 6532 is in part superseded by Section 1274 which was originally Section 19 of Chapter 6877, Acts of 1915. Section 1233 vested authority in the Commissioner of Agriculture to buy, sell, hold, lease and hypothecate property, real, personal or mixed, in connection with the Shell Fish industry. The latter Act is now Section 1274, and provides that the Shell Fish Commissioner shall acquire, subject to the approval of the Commissioner of Agriculture, in the name of the State of Florida, such boats, vessels, and other property as may be necessary to regulate and supervise the enforcement of this law. Therefore, it is my opinion that the Shell Fish Commissioner has authority to purchase, subject to the approval of the Commissioner of Agriculture, anything which may be necessary to regulate and supervise the enforcement of the law relating to the Shell Fish industry. In other words, he may make such purchases as he deems proper, and thereupon procure the approval of the Commissioner of Agriculture. This would include the authority to purchase all equipment, fuel, and provisions necessary for the operation of any boat or vessel used in carrying out the provisions of the Act which may be used under the law as the discretion of the Shell Fish Commissioner dictates.

Section 1235, Revised General Statutes, 1920, provides that the Shell Fish Commissioner shall have authority to appoint deputies to act as patrolmen and to do and perform other duties imposed upon the Shell Fish Commissioner as he may deem proper at salaries, wages, hire or commission, to regulate the oyster and clam industry, and

to carry into effect the provisions of the law, and the rules and regulations of the Commissioner of Agriculture as may be agreed between them. This authority is broad in its scope, providing, first, that he may employ deputies; second, that he may regulate the oyster and clam industry; third, that he may carry into effect the provisions of the article and the rules and regulations of the Commissioner of Agriculture as may be agreed upon between them, and the only limit placed upon expenditures in this Section is that of salary, or compensation to be paid to deputies.

Again, in Section 1237, Revised General Statutes, 1920, the provision is found that the "Shell Fish Commissioner, with the consent of the Commissioner of Agriculture, may establish and maintain by means of vessels the necessary patrol of the waters herein stated, with authority to use such force as may be necessary to capture any vessel or person violating the provisions of this article." This provision of the law vests in the Shell Fish Commissioner, when he has acquired the consent of the Commissioner of Agriculture, (which consent may be indicated either verbally, in writing, or otherwise) to establish and maintain by means of vessels the *necessary* patrol of the waters therein stated, and the necessity of such patrol is a matter entirely within the discretion of the Shell Fish Commissioner; as is also the decision as to what is a proper expenditure to effectually establish and maintain such patrol by means of vessels. This provision would, necessarily, carry with it the authority to purchase all supplies which, in the judgment of the Shell Fish Commissioner, are expedient to be used in maintaining such patrol, and the vessels therein used.

Having considered these several sections of the law touching the questions above quoted, it is my opinion that the Shell Fish Commissioner may acquire boats, vessels, and other property in the name of the State of Florida which he may deem necessary to carry out, regulate and supervise the enforcement of the law, but that such pur-

chases are subject to the approval of the Commissioner of Agriculture; that having acquired such property he may, with the consent of the Commissioner of Agriculture, establish and maintain the patrols, and having procured the consent of the Commissioner of Agriculture to establish and maintain the patrols he may incur such expense therein as he may deem proper without referring the items to the Commissioner of Agriculture.

I find no provision in the law which will authorize the purchase of luxuries, either to be used by the Shell Fish Commissioner, or any person employed by him, but the question of what would constitute a luxury and what would come within the scope of the meaning of the word "necessary" as used in the Act, is a matter which must be decided largely by the Shell Fish Commissioner.

Yours very truly,

RIVERS BUFORD,

Attorney General.

COSTS—CRIMINAL.

Tallahassee, Fla., May 9, 1921.

*Mr. G. C. McClure,
Burdine Bldg.,
Miami, Fla.*

Dear Sir:

Replying to your letter of May 7th, beg to say:

In my opinion where two or more persons are arrested upon a joint information, charging them with any criminal offense, that all names appearing in the information should be included in your warrant and all should be docketed together, the Sheriff would thereupon be entitled

for a separate fee for each arrest, but he would not be entitled to separate mileage in each case unless he actually traveled the distance more than once. He would be entitled, however, to a separate fee for conveying prisoner in each case.

The Clerk would be entitled to receive his fees based upon one case; the prosecuting attorney would be entitled to \$5.00 for each individual convicted of a misdemeanor and would be entitled to \$10.00 for each individual convicted of a felony, whether the parties are charged jointly or separately.

You understand of course that this is merely my opinion, and that it does not govern any one, as none of these officers are under the jurisdiction of the Attorney General.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SHELL FISH COMMISSIONER—DEPUTIES—
EXPENSES.

Tallahassee, Fla., May 17, 1921.

*Hon. T. R. Hodges,
Shell Fish Commissioner,
Tallahassee, Fla.*

Dear Sir:

I have your communication of the 16th inst., asking my construction of that part of Section 1235, Revised General Statutes of Florida, quoted in your letter as follows, to-wit:

“The said Shell Fish Commissioner shall have authority to appoint deputies, to act as collectors, patrolmen, and to do and perform other duties imposed

upon the Shell Fish Commissioner by this Article, as he may deem proper, at salaries, wages, hire or commission, to regulate the oyster and clam industry, and to carry into effect the provisions of this Article, and the rules and regulations of the Commissioner of Agriculture, as may be agreed upon between them: Provided, no such deputy shall receive as compensation more than 10 per cent. of all monies collected by him, and which such compensation not to exceed \$50.00 per month."

It is my opinion, that this provision means that the compensation of a deputy shall be limited, first, to ten per cent. of all monies collected and in the event that such ten per cent. exceeds the sum of \$50.00, then his compensation is limited to the sum of \$50.00 and he receives no commission beyond that sum.

The Statute apparently does not contemplate any expense account to be paid on behalf of patrolmen or deputies, but it is my opinion that under other provisions of the law authorizing the Shell Fish Commissioner to enforce the statute, that he would be authorized to pay the necessary traveling expenses incurred by a deputy in the discharge of his duties, which expenses would include transportation and meals and lodging when away from his place of usual abode.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SHELL FISH COMMISSIONER—DEPUTIES—
SALARY.

Tallahassee, Fla., May 18, 1921.

*Hon. T. R. Hodges,
Shell Fish Commissioner,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of the 17th inst., requesting further opinion from me as to your authority to pay salary to any deputy or patrolman, beg to say:

In my opinion, Section 1235, Revised General Statutes of Florida, is very clear and is subject to only one construction, which is, that deputies and patrolmen can only be paid commissions of ten per cent. on the monies collected by him, and that this ten per cent. shall only be paid until it reaches the aggregate amount of \$50.00 per month. It is, therefore, my opinion, that you are not authorized to pay any deputy or patrolman a straight salary of any amount, but that you can only pay him upon the basis of fees collected by him.

Yours very truly,
RIVERS BUFORD,
Attorney General.

CONSTABLE—SPECIAL—APPOINTMENT.

Tallahassee, Fla., May 24, 1921.

*Hon. Andrew J. Kemp,
Justice of the Peace,
Key West, Fla.*

Dear Sir:

Replying to your letter of the 19th inst., beg to say:

It is my opinion that a Justice of the Peace has not authority to appoint a special Constable to serve process, except in cases of emergency where the regular constable is disqualified, or is not available and where at the same time the Sheriff of the county, or one of his Deputies are not available.

I do not think that it was the intention of the law to vest Justices of the Peace with the authority to choose the executive officers of their courts, and I seriously doubt the validity of the statute authorizing the appointment of such special Constables under any condition, as the Constitution provides that all officers in this State must be appointed by the Governor, or elected by the people.

Yours very truly,

RIVERS BUFORD,
Attorney General.

STATE BOARD OF HEALTH—EXPENDITURES.

Tallahassee, Fla., May 24, 1921.

*Dr. Ralph N. Greene,
State Health Officer,
Jacksonville, Fla.*

Dear Doctor:

I have carefully considered the communication from Dr. A. A. Murphree, with reference to the State Board of Health appropriating the sum of Four Hundred Dollars to be used to disseminate information to the students of the summer school to be conducted at the University of Florida in the School of Hygiene, and replying to your request that I advise you whether or not the Board may so expend this money, I beg to say:

It is my opinion, that the only question to be answered is, "Does the State Board of Health deem this proposed action to be an expedient method of disseminating information concerning the cause, nature, extent and prevention of communicable diseases?" If the answer is "Yes," then I think the Board has the authority to appropriate and so use the money. If the answer is "No," then I am of the opinion that there is no other theory upon which the appropriation could be so made and used.

Yours very truly,

RIVERS BUFORD,

Attorney General.

DRUNKENNESS—JURISDICTION OF COUNTY
JUDGE; CONCEALED WEAPONS—LICENSE;
CONSTABLE—SERIVCE.

Tallahassee, Fla., May 28, 1921.

*Hon. Chas. W. Cook,
Justice of the Peace,
Camp Walton, Fla.*

Dear Sir:

Replying to your letter of the 24th inst., beg to say:

County Judges' Courts have exclusive jurisdiction over charges of drunkenness, first offense. See Section 5487, Revised General Statutes of Florida.

There is no conflict between Section 5095 and Section 5100, the license provided under Section 5100 does not authorize any person to carry a pistol concealed, but under such license he is only authorized to carry such weapon openly, and if he carries same concealed he is subject to prosecution under Section 5095.

Any constable of a county may serve process that may legally be served in the territory where it is sought to be served. You understand of course that there are a number of writs issued from the Justice of the Peace Court which cannot be served outside of his district.

Yours very truly,

RIVERS BUFORD,

Attorney General.

COUNTY OFFICES—RECORDS FURNISHED—
SUPPLIES PURCHASED.

Tallahassee, Fla., May 28, 1921.

*Hon. Julian L. Hazard,
County Judge,
Tampa, Fla.*

Dear Sir:

Replying to your letter of May 21st, beg to say:

It is my opinion that the County Commissioners should provide in the several counties all permanent record books, files and other things incident to the keeping of public records at the expense of the county.

It is my opinion that legal blanks, envelopes and other stationery which are procured and used for the convenience of the officer, are things which he should procure at his own expense.

Yours very truly,

RIVERS BUFORD,

Attorney General.

BONDS, OFFICIAL—COUNTY—APPROVAL OF
COUNTY COMMISSIONERS.

Tallahassee, Fla., June 1, 1921.

*Hon. L. L. Pararo,
Clerk, Circuit Court,
Crawfordville, Fla.*

Dear Sir:

Replying to your letter of the 31st ult., beg to say:

It is my opinion that it is the duty of the Board of County Commissioners to approve any good bond submitted by a person appointed by the Sheriff as his Deputy Sheriff. The duty of the Board is only to pass upon the sufficiency of the bond.

It is also my opinion, that if the Board of County Commissioners become convinced that any bond is insufficient, that the Board may require any officer, whose bond must be approved by the Board of County Commissioners, to file a new bond with good and sufficient sureties.

Yours very truly,

RIVERS BUFORD,
Attorney General.

TAX DEED—TAX CERTIFICATE LOST OR
DESTROYED.

Tallahassee, Fla., June 6, 1921.

*Hon. P. C. Eldred,
Clerk Circuit Court,
Ft. Pierce, Fla.*

Dear Sir:

Replying to your letter of June 1st, beg to say:

You cannot issue tax deed upon affidavit alleging that a tax certificate has been lost or destroyed.

It will be necessary for the owner of the certificate to re-establish the same by order of the court, before a tax deed may issue.

Yours very truly,

RIVERS BUFORD,

Attorney General.

PRISONERS—CONVEYING—FEES.

Tallahassee, Fla., June 6, 1921.

*Hon. Wm. B. Davis,
Attorney-at-Law,
Perry, Fla.*

Dear Judge:

Replying to your letter of June 3rd, with reference to provisions contained in Chapter 7886, Acts of 1919, beg to say:

It is my opinion, that Sheriff's fees for conveying State prisoners, or persons committed to the Industrial School for Boys, or persons committed to the Industrial School for Girls is limited to \$4.00 per day and transportation.

It appears to have been the intention of the Legislature that the counties should pay the per diem and the State should pay the transportation, but there has never been any appropriation made with which the State may pay such transportation for conveying persons committed to either of the Industrial Schools. The transportation for conveying State prisoners, however, could be paid out of the State Prison Fund.

It is also my opinion that under the provisions of the Chapter above mentioned, each county would have a valid

claim upon which to base request for a relief bill to have the State refund to the county such amount as has been, or may be expended for transportation of persons committed to either of the Industrial Schools. But in the meantime it will be necessary for the counties to continue to provide such transportation, because of the fact that no appropriation is made by which the same may be paid by the State Treasurer.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SHELL FISH COMMISSIONER—DUTIES AS TO
LOCAL LAWS.

Tallahassee, Fla., June 7, 1921.

*Hon. T. R. Hodges,
Shell Fish Commissioner,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of June 6th, in which you request my opinion as to "whether or not the Shell Fish Commissioner should enforce the provisions of local salt water fish laws when such local law does not specifically state that such local law shall be enforced by the Shell Fish Commissioner or his deputies," I beg to say:

It is my opinion that it is the duty of the Shell Fish Commissioner to enforce the provisions of all laws of the State of Florida relative to salt water fish.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SHELL FISH—ALIENS FISHING.

Tallahassee, Fla., June 7, 1921.

*Hon. T. R. Hodges,
Shell Fish Commissioner,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of June 6th, requesting my opinion as to the construction to be placed upon Sections 1261 and 1262, Revised General Statutes of Florida, beg to say:

These Sections were originally embraced in Section 14 of Chapter 6877, Acts of 1915, and the Supreme Court of the State of Florida in the case of McClain vs. West, decided November 27th, 1920, settled the question which you propounded by construing this Section, and that construction governs the application of these Statutes.

The court in effect holds that an alien or non-resident employed upon a boat, which boat is engaged in the fishing industry, is required to pay a license of \$10.00, whether he actually fishes or not, or if he is not upon a boat engaged in the fish industry but fishes for purposes other than his own use, he is required to pay a license of \$10.00, but he is not required to pay both licenses.

Should you wish to read this decision, you will find it in Southern Reporter Advance Sheet, of March 19, 1921, on page 49.

Yours very truly,
RIVERS BUFORD,
Attorney General.

STATE ATTORNEY—ACTING—COMPENSATION.

Tallahassee, Fla., June 14, 1921.

*Hon. W. P. Dineen,
Palatka, Fla.*

Dear Sir:

It is my opinion that under the statute you would be entitled to pay as Acting State's Attorney for only the days in which you were in actual attendance upon court; but I think that a liberal construction would warrant you being paid for the days in attendance in open court and also for the days which you spent in going to Starke to prepare matters, and for the convening of court, provided, the aggregate does not exceed the amount of the salary due the State's Attorney for the period of the vacancy.

I feel sure that if you will get Judge Long to O. K. such a bill that the Comptroller would issue his warrant for the same.

Yours very truly,

RIVERS BUFORD,

Attorney General.

TAXATION—POLLS—WOMEN.

Tallahassee, Fla., June 18, 1921.

*Mr. F. S. Crews,
Denaud, Fla.*

Dear Sir:

I am in receipt of your registered letter, dated June

16th, in which you ask my opinion on the following question:

“Is a woman supposed to have paid a poll tax for 1920, to have been eligible to vote in an election for the purpose of voting for School Trustees and a Special School Tax?”

Replying to your inquiry will state that at the recent session of the Legislature there was a law passed which provides that no person who became eligible in 1920 to vote in this State shall be denied the right to vote because of not having paid a poll tax for that year. This includes all women voters.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SHELL FISH COMMISSIONER—PERMANENT
RESIDENT DEFINED.

Tallahassee, Fla., June 20, 1921.

*Hon. T. R. Hodges,
Shell Fish Commissioner,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of June 13th, beg to advise:

The word “permanent” is defined to mean,—“not temporary; abiding; remaining fixed or enduring in character, state or place.” The word “resident” is defined in Burrill’s Law Dictionary to be,—“one who has a seat or settlement in a place; one who dwells, abides or lives in a place for some time.” Therefore, it follows that a *permanent resident* is one having a fixed and enduring seat or settlement in a particular place.

There is no fixed time required in which to acquire a permanent residence in a State. If a person should move to Tallahassee, with the intention then to remain indefinitely at this place, he would immediately become a permanent resident of this place, although he might change his mind in six months and move somewhere else. On the other hand, if he came here intending to remain only temporarily and intending to leave as soon as certain things were accomplished, he would not be a permanent resident, although it might require several years for him to accomplish the purpose for which he remained in this place to accomplish.

As used in the statute referred to in your letter, it is my opinion that it was the intent of the Legislature to refer to those people who intend to remain in the State all the year round and from year to year, and who are identified or intend to become identified as people of Florida, as distinguished from individuals who intend to sojourn within the State only for a season, such as laborers or investors, who are within the State only to ply their trade temporarily, or during a particular season, or portion of each year.

Yours very truly,

RIVERS BUFORD,

Attorney General.

TAXATION—TAX SALES—LEGAL HOLIDAY.

Tallahassee, Fla., June 20, 1921.

*Hon. C. E. Pellicer,
Tax Collector,
Flagler County,
Bunnell, Fla.*

Dear Sir:

Replying to your letter of the 18th inst., beg to say that

I know of no reason why a tax sale, which is advertised to occur on the 4th day of July should be postponed to some other day. It is my opinion, that if the sale is advertised to occur on the 4th day of July and that day occurs on Monday, the sale should be held on that day. The mere fact that the 4th of July is a legal holiday cuts no figure as to court action or legal sales in this State.

Yours very truly,

RIVERS BUFORD,

Attorney General.

HOTEL COMMISSION—LICENSE NOT
TRANSFERABLE.

Tallahassee, Fla., June 21, 1921.

*Hon. Jerry W. Carter,
Hotel Commissioner,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of June 21st, beg to say:

It is my opinion that under the provisions of Sections 2126, 2127 and 2129, Revised General Statutes of Florida, the license provided for under Section 2126 is not transferable, either from the individual or corporation procuring the same from the Hotel Commissioner to some other person, or from one building or location to another building or location.

You will observe that Section 2129 provides that the license shall be furnished upon application and that the applicant shall fill in application blank, stating the full name and address of the owner and agent of the building, or both the lessee and manager of such hotel, rooming house

or restaurant, together with a full description of the building and property to be used, or proposed to be used for such business, and stating the location of the same. Such provision clearly shows it was the intent of the Legislature to make the license non-transferable in every respect.

Yours very truly,

RIVERS BUFORD,

Attorney General.

TRIALS—NOT AFFECTED BY LATER STATUTES.

Tallahassee, Fla., June 23, 1921.

*Hon. Arthur L. Auvil,
Prosecuting Attorney,
Dade City, Fla.*

Dear Sir:

I have your inquiry of the 21st inst., as follows:

"I notice in the news reports that the Supreme Court, in the case of Sam P. Albritton vs. State, has declared unconstitutional the law against drunkenness, basing its decision upon the ground that the same was not germane to the subject of enforcement of the prohibition laws. If this law had been contained in and enacted by Chapter 7736 alone, I think this holding would be proper. But this section was re-enacted as Section 5472 of the General Revised Statutes, and it appears to me that as thus re-enacted it is not subject to the objection urged against it. I hope that a reconsideration can be had and the law upheld upon this theory."

In reply I beg to advise that the indictment upon which Albritton was sentenced was returned on December 11th, 1920, and charged him with being drunk as a second of-

fense, prior to that date under the provisions of Chapter 7736, Acts of 1918. The decision referred to relates to the law as it was at the time said offense was charged to have been committed. Since the Revised General Statutes did not go into effect until February 6, 1921, no provision thereof is in any way affected by the decision.

See *Carlton v. State*, 63 Fla. 1; 58 Sou. 486.

Yours very truly,

RIVERS BUFORD,

Attorney General.

COUNTY JUDGE—TERMS OF COURT.

Tallahassee, Fla., June 27, 1921.

Hon. Lee M. Hammel,
County Judge,
Wauchula, Fla.

Dear Sir:

Replying to your letter of June 21st, I beg to say that there is no direct statute requiring County Judges to hold terms of court, other than the following:

Section 3349.—“In all matters, his powers, terms and duties shall be the same as those of a Justice of the Peace.”

Construe this with Sections 3361 and 3362:

“Trial terms of such court shall be held on such day as the judge or justice thereof shall designate therefor in the manner provided in the next section.”

Section 3362.—“Whenever the day of trial shall be fixed upon for any such court by the judge or justice thereof, written notice of the same shall be made and given by such Judge or Justice of the Peace, and filed

in the office of the Clerk of Circuit Court of the county."

Then when you take into consideration 2692, which provides that jurors may be challenged for cause, where they have served at any other term of the court, or if the court have no term designated, at any other trial within twelve months, you can easily see that the County Judge will have to either conform to sections above mentioned, or exhaust the jurors of the county, before the year is out. This last statute says where there is no term, at any other trial of said court.

The statute was mandatory for a term prior to 1919, when Section 2692 was passed. This last section by operation forced County Judges to comply with Sections 3349, 3361 and 3362.

I think that if you will refer to the above, you will agree with me, that the statute makes it mandatory for the County Judges and Justices of the Peace to designate their terms of office and file same with the Clerk of the Circuit Court.

The practice outlined above is being followed in a number of the counties in this State with good results.

Of course you cannot draw a jury from the jury box, but you will issue a venire to the Sheriff some day before your term time authorizing him to summons a certain number of jurors, (I would suggest twelve or eighteen) to serve for the term and to be summoned from the body of the county. This will work some hardship on individuals who are required to serve as jurors, but it is one of those hardships which a good citizen must edure, and when you have had the practice in vogue for a little while you will find the people will not object as much as they probably will at the beginning.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SHERIFFS—DEPUTIES—SELECTION.

Tallahassee, Fla., June 27, 1921.

*Hon. W. R. Hardee,
County Commissioner,
Ft. Pierce, Fla.*

Dear Sir:

Replying to your letter of June 24th, beg to say that I do not think that the Board of County Commissioners have any authority whatever to say who shall be and who shall not be a Deputy Sheriff. The only authority of the Board in such matters is, to approve the bond, that is, to approve the form of the bond and the sureties thereon.

The selection of Deputies as in all offices is entirely within the control of the principal in office.

Yours very truly,

RIVERS BUFORD,

Attorney General.

JURORS—WOMEN.

Tallahassee, Fla., July 5, 1921.

*Hon. Thos. E. Matthews, Sec'y.,
Chamber of Commerce,
Key West, Fla.*

Dear Sir:

Replying to your letter of July 2nd, beg to say:

Under the law of the State of Florida, women are not qualified to act as jurors.

The Federal Amendment pertaining to suffrage has no bearing whatever upon the qualification of women as jurors.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SCHOOLS—INSTITUTIONS OF HIGHER LEARN-
ING—FUNDS—WHEN REVERTED.

Tallahassee, Fla., July 5, 1921.

*Hon. J. T. Diamond,
Sec'y. Board of Control,
Tallahassee, Fla.*


Dear Sir:

Replying to your letter of July 2nd, beg to say:

If you will refer to page 209 of the Biennial Report of the Attorney General, 1919-1920, you will find that an opinion was rendered by my predecessor to Honorable Ernest Amos, as Comptroller, construing Chapter 7277, Acts of 1917.

You will observe that the Comptroller was therein advised to revert any balances remaining under the appropriations provided in this Act on July 1st, 1919, to the Treasurer, and was further advised that if at any time in the future an appropriation should be exhausted, he should then pay the expenses of the Department of which such appropriation had been exhausted, with any money that had reverted from the appropriation of such Department under Chapter 7277.

Therefore, under this opinion if a part of the appropriation of the Board of Control under Chapter 7277, Acts of



1917, was reverted July 1st, 1919, and the appropriation for the Board of Control under the Acts of 1919, was exhausted before the payment of expenses to July 1st, 1921, the Comptroller will have authority to use as much of such reverted fund as is necessary to meet the delinquent expense account which accrued up to July 1st, 1921.

Yours very truly,

RIVERS BUFORD,
Attorney General.

SHERIFFS—DEPUTIES—APPOINTMENTS
OUTSIDE COUNTY.

Tallahassee, Fla., July 8, 1921.

Hon. R. C. Baker,
Sheriff,
West Palm Beach, Fla.

Dear Sir:

Replying to your letter of July 6th, beg to say:

In my opinion you cannot appoint a Sheriff of some other county to act as Deputy Sheriff in your county, but you can appoint one of his Deputies as a Deputy Sheriff of your county, for the reason that one person may hold commission as a Deputy Sheriff for several counties.

Yours very truly,

RIVERS BUFORD,
Attorney General.

STATE BOARD OF HEALTH—QUARANTINE—
MAINTENANCE.

Tallahassee, Fla., July 8, 1921.

*Dr. Raymond C. Turck,
State Health Officer,
Jacksonville, Fla.*

I have your inquiry under date of the 6th instant as follows:

“A copy of Chapter 8557—(No. 162), has just been received, and I note that Section 2016, reads in part as follows: ‘To create a special fund for maintenance and support of the State Board of Health, other than for maintenance, quarantine, or maritime sanitation.’

“Please give me an official opinion as to the interpretation of the latter part of this section. May we construe ‘other than for maintenance, quarantine, etc.’, to relieve the State Board of Health of the financial consideration of maintaining quarantine in cases of smallpox?”

Chapter 8557, Laws of Florida, Acts of 1921, makes no change in the law except in providing for the levy and collection of a tax of one-fourth of one mill instead of one-half of one mill.

Section 2016 of Revised General Statutes, prior to its amendment as above noted, was an exact re-enactment of Section 1, of Chapter 4693, Laws of Florida, Acts of 1899. Hence, the duties imposed by law upon the State Board of Health are in no way lessened by the Act of 1921; it is simply provided with less means with which to perform them.

Standing alone said Section 2016 is incongruous and unintelligible, and to adopt a literal construction of it as it stands would lead to the absurd result of providing a fund for a certain purpose with one hand and taking it away with the other. But this section is to be read and con-

strued in connection with the whole statute of which it is a part,—Sections 1986 to 2019, both inclusive, of the Revised General Statutes,—and in accordance with the well established rules applied in the construction of statutes.

“Where a word has been omitted, and the context affords the means of correction, the proper word will be deemed substituted or supplied. This is but making the strict letter of the statute yield to the obvious intent.”

Considering this section in connection with Sections 1992, 1996, and 2004, it is evident that the word “of” was inadvertently omitted between the word “quarantine” and the word “maintenance” immediately preceding. With that word so incorporated in the section, it is easily understood, clear, and makes the whole statute harmonious.

Section 1992 provides for quarantine in cases of smallpox in any portion of this State, while Section 1996 provides for quarantine of vessels hailing from infected, foreign ports, with their crews, passengers and cargo, and further provides that the Board “shall charge and receive from such vessels” the expenses of such quarantine, etc.

Taking the statute as a whole, it seems to be clear that the Board of Health is required to bear the financial burden of quarantine in cases of smallpox in any portion of this State out of the fund provided for by Section 2016, as amended, but that no part of such fund shall be used for maintenance of maritime quarantine or sanitation that may be required under the provisions of Section 1996, since the quarantined vessels are required to meet the expenses thereof.

For the reasons above stated, I am of the opinion that the statute referred to cannot be construed “to relieve the State Board of Health of the financial consideration of maintaining quarantine in cases of smallpox.”

Yours very truly,

RIVERS BUFORD,

Attorney General.

TAXATION—POLLS—WOMEN.

Tallahassee, Fla., July 11, 1921.

*Hon. W. H. Matthis,
County Judge,
Cross City, Fla.*

Dear Judge:

Female voters will not be required to pay a poll tax to be eligible to vote during the year 1921. They will be required to pay the 1921 poll tax to vote in 1922, and thereafter will be required to pay the poll tax the same as men are required.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SHERIFF—COSTS—CONSTRUCTIVE MILEAGE.

Tallahassee, Fla., July 11, 1921.

*Hon. E. M. Burk,
Justice of the Peace,
St. Petersburg, Fla.*

Dear Sir:

Replying to your letter of the 8th inst., beg to say that neither a Deputy Sheriff nor a Constable have any right to charge constructive mileage, that is, to charge for miles not actually traveled, and if you, as Justice of the Peace, tax as costs mileage that is not actually traveled, you would violate the law.

Yours very truly,
RIVERS BUFORD,
Attorney General.

TAXATION—LODGES.

Tallahassee, Fla., July 11, 1921.

*Hon. J. A. Mitchell,
Tax Assessor, Hamilton Co.,
Jasper, Fla.*

Dear Sir:

I have your inquiry of July 9th, and in reply thereto beg to say that lodges of all descriptions are subject to tax assessment against their real and personal property, except such money as they may hold in a beneficiary fund.

Yours very truly,

RIVERS BUFORD,
Attorney General.

SHERIFFS—MILEAGE—CONVEYANCE TO INDUSTRIAL SCHOOL FOR BOYS AND GIRLS.

Tallahassee, Fla., July 14, 1921.

*Hon. J. R. Jones,
Sheriff, Leon County,
Tallahassee, Fla.*

Dear Sir:

Chapter 7886 provides among other things as follows:

“State Prison and Industrial School for Boys and Girls: Conveying prisoners to, \$4.00 per day for himself and \$2.00 per day for each guard actually necessary, the necessity to be determined by the comptroller. The State will furnish transportation.”

My construction of the above quoted part of said Chapter is, that the county will pay the Sheriff for time consumed in such transportation,—\$4.00 per day for his services and \$2.00 per day for each guard that he employs, thereby eliminating the payment of any mileage whatever, and that it was contemplated by the Legislature that the State would furnish or reimburse the Sheriff for all cost of transportation necessary; but the Legislature failed to appropriate any money for this purpose, and therefore, there is no fund upon which the Comptroller can draw his warrant for this transportation. Therefore, the only course which the counties can properly pursue is to pay this transportation, and procure a Relief Bill for the same by Act of the next Legislature.

Yours very truly,

RIVERS BUFORD,

Attorney General.

JAILER—SELECTION—COMPENSATION.

Tallahassee, Fla., July 15, 1921.

*Hon. T. W. Jones,
Clerk Circuit Court,
Milton, Fla.*

Dear Sir:

Replying to your letter of the 14th instant, beg to say that I know of no law fixing the salary of a Jailer.

The Sheriff is the custodian of the jail, Court House and like public buildings of the county, under the direction however, of the Board of County Commissioners. Therefore, in my opinion it would be proper for the Sheriff to select the man whom he wishes to act as Jailer, because this

must be a man whom the Sheriff is willing to trust in that position and one that he is willing to rely upon to properly perform the duties, which will be required by the Sheriff of the Jailer, and unless he has the right to make the selection and to discharge the man when his services are not satisfactory, there would be unpleasant friction and inefficient service, which would be detrimental to the best interests of the county. The salary of the Jailer must be paid by the County Commissioners if the jail fees will not suffice to pay the salary,—and, therefore, I think that it would be proper for the County Commissioners to fix the amount of such salary and employ the man designated by the Sheriff to act as long as his services are satisfactory to the Sheriff.

Yours very truly,

RIVERS BUFORD,

Attorney General.

TAXATION—ROADS AND BRIDGES—LEVY
AND DISTRIBUTION

Tallahassee, Fla., July 23, 1921.

*Hon. J. S. Davis, Attorney
Board County Commissioners,
St. Petersburg, Fla.*

Dear Sir:

Replying to your letter of the 12th instant, addressed to Governor Hardee, enclosed with your letter of the 18th instant to me, I beg to say:

It is my opinion that under the decisions of the Supreme Court in this State, the County Commissioners are limited by the provisions of Chapter 8437 to the levy of 8 mills

for road and bridge purposes, and that the Board of County Commissioners can not levy 8 mills and also an additional 5 mills as provided by Section 1604, Revised General Statutes of Florida, but that Chapter 8437, Acts of 1921, in effect, amends Section 1604, Revised General Statutes, by raising the millage which may be levied for this purpose from 5 mills to 8 mills.

It is my opinion that whether the amount levied by the County Commissioners for road and bridge purposes be 5 mills or 8 mills, or any other amount under 8 mills, one-half of the amount so realized from such special tax on the property in incorporated cities and towns shall be turned over to the said cities and towns, and it is also my opinion that if the Board of County Commissioners should fail or refuse to turn over this money to such cities and towns that any city or town being so entitled to the same may sustain mandamus proceedings against the Board of County Commissioners and require such Board by order of court to turn over such money.

Yours very truly,

RIVERS BUFORD,

Attorney General.

COUNTY JUDGE—MAY DESIGNATE SHERIFF OR
CONSTABLE AS EXECUTIVE OF OFFICE.

Tallahassee, Fla., July 23, 1921.

*Hon. W. J. Epperson,
Sheriff Bradford County,
Starke, Fla.*

Dear Sir:

Replying to your letter of the 22nd instant, beg to say that under the provisions of Section 6002, Revised Gen-

eral Statutes of Florida, "the Sheriff of the county, or any Constable, shall be the executive officer of the County Judge's Court."

Therefore, the question of who shall act at any term, or at anytime, as the executive officer of such court is a question which the County Judge has within his discretion the right to decide, and if the County Judge decides that he will recognize a constable as the executive officer of his court the constable will be entitled to serve and receive the compensation for such service.

I am unable to approve this provision of the statute, because I think that it is an unwise provision, and is certainly an unnecessary one, but the Legislature in its wisdom has made this the law and we are, therefore, bound by it.

Yours very truly,
RIVERS BUFORD,
Attorney General.

COURT REPORTERS—TRIALS IN COUNTY COURTS.

Tallahassee, Fla., July 23, 1921.

Hon. T. L. Comer,
County Judge,
Kissimmee, Fla.

Dear Sir:

There is no authority for the County Commissioners to pay the expenses incident to stenographic report of cases upon final trial in County Courts in this State. I think that such a law would be a good one.

Yours very truly,
RIVERS BUFORD,
Attorney General.

CLERK CIRCUIT COURT—PUBLICATION CHARGES
ON TAX ROLL AGAINST TAX COLLECTOR.

Tallahassee, Fla., July 23, 1921.

*Hon. W. A. Lewis,
Clerk Circuit Court,
Jasper, Fla.*

Dear Sir:

Replying to your letter of July 18th, beg to say that in my opinion the provisions requiring publication as set forth in Section 733, Revised General Statutes of Florida, are mandatory, and therefore, I must advise you that the proper method to pursue is that method which is prescribed by said Section.

Yours very truly,
RIVERS BUFORD,
Attorney General.

TAX COLLECTOR—COLLECTIONS BY SHERIFF.

Tallahassee, Fla., July 23, 1921.

*Hon. T. W. Jones,
Clerk Circuit Court,
Milton, Fla.*

Dear Sir:

Replying to your letter of July 18th, beg to say:

It is my opinion that the Board of County Commissioners has no authority to make any arrangement with the Sheriff for the collection of taxes. This is a matter within the province of the Tax Collector.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SEARCHES—DAY OR NIGHT.

Tallahassee, Fla., July 25, 1921.

*Hon. A. E. Garner,
Deputy Sheriff,
Arcadia, Fla.*

Dear Sir:

Replying to your letter of July 22nd, beg to say:

There is no law in this State requiring search warrants to be served in the day time. The Circuit Judge of this Circuit recently held that a search warrant could be lawfully executed in the night time, and I think that this is the correct view.

An officer has no authority to search an automobile upon suspicion and without a search warrant for game, liquor or anything else.

Yours very truly,

RIVERS BUFORD,

Attorney General.

ELECTIONS—FEE-HOLDERS—HUSBAND AND WIFE.

Tallahassee, Fla., July 26, 1921.

*Mr. Harry J. Shultz, Jr.,
Jensen, Fla.*

Dear Sir:

Replying to your letter of July 25th, beg to say:

In cases where the law requires a person to be a free-

holder to be eligible to vote in any election the law means just what it says, and a woman is not entitled to vote because her husband owns a fee simple title to land, neither is a man entitled to vote upon the ground that his wife owns a fee simple title to land. A person to be qualified to vote must hold a fee simple title.

Yours very truly,
 RIVERS BUFORD,
 Attorney General.

BONDS, NINETY DAY COST—FORFEITURE—
 COMMITMENT OF DEFENDANT.

Tallahassee, Fla., July 26, 1921.

Hon. W. M. Griffin,
Sheriff,
Avon Park, Fla.

Dear Sir:

I received your telegram this morning, but being afraid that you would not understand an explanation by wire, I telegraphed you that I would write fully.

If you will refer to Section 6122, Revised General Statutes, you will find the law which governs in a case like the one you have in hand.

There is no way for the surety on the bond to avoid payment of the bond if he is solvent, but by proceeding properly at the right time he can cause the defendant to serve the sentence imposed upon him.

If it is the desire of the sureties on the bond to have the defendant serve the sentence, they should refuse to pay the bond when it becomes due, and thereupon the Sheriff will make his return upon the bond showing that the same

has not been paid at maturity, and the Sheriff shall then file the bond in the office of the Clerk of the Circuit Court. Thereupon the Clerk of the Circuit Court is required to issue execution against the sureties. At the same time that the Sheriff returns the bond to the Clerk of the Circuit Court he should file a certificate before the Judge of the Court wherein the defendant was convicted, certifying that the bond has not been paid at maturity, and that the defendant has not served the sentence imposed; thereupon, it becomes the duty of the Judge to issue a commitment for the defendant to serve the penal sentence imposed upon him. If the defendant is within the jurisdiction of the State, the Sheriff may have him arrested and put him to serve the sentence. If he is beyond the State he can submit copy of the affidavit and certified copy of the record of the trial and judgment of the Court, together with a certified copy of the commitment to the Governor and ask for a requisition, which upon such showing would be granted.

Under the provisions of Section 6122, Revised General Statutes, the defendant forfeits his right to being released upon the bond for payment of the fine and costs by his sureties, when the same is not paid at maturity of the bond until the same shall have been paid. Of course there is always a way for the sureties on the bond to stay off the service of the execution until such time as the defendant has served the sentence, but if they should pay the bond when it is due, or pay the execution before the defendant has served the sentence, the defendant is entitled to discharge.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SEARCH WARRANT—DISTINCTION OF TRIAL
FOR VIOLATION PROHIBITION STATUTES.

Tallahassee, Fla., July 28, 1921.

*Mr. W. A. Morris,
DeLand, Fla.*

Dear Sir:

Replying to your letter of the 26th instant, beg to say:

The Act of 1921, authorizing the issuance and service of a search warrant for intoxicating liquors has no connection whatever with the trial of a person charged with the offense of violating the prohibition statutes. Violators of the prohibition statutes charged with the first offense are triable exclusively in the County Judge's Court in counties where there is no Court of Record, Criminal Court of Record, or County Court. A search warrant may be issued either by a County Judge or a Justice of the Peace, but there is no provision for any person to be tried upon the allegation of the search warrant. Therefore, each is a separate proceeding.

Yours very truly,
RIVERS BUFORD,
Attorney General.

GAME—HUNTING BEAR.

Tallahassee, Fla., July 30, 1921.

*Hon. G. V. Ramsey,
County Judge, Hernando Co.,
Brooksville, Fla.*

Dear Sir:

Replying to your letter of the 28th instant, I herewith

enclose you a copy of the Game Law as passed by the recent session of the Legislature.

There is nothing in this law, unless it be the provisions of Section 11, that would be construed to apply to bear, and in my opinion a license to hunt for fur bearing animals should not be granted out of the fur season.

Of course, if a man happens to find a bear, it is not unlawful for him to kill the bear, but no condition should be allowed to exist whereby persons may use the pretext of bear hunting as a subterfuge under which to hunt and kill deer.

I suspect that the citizens of your county who are interested in stock raising, can manage to kill all the bear that are committing ravages on their stock without assistance from the neighboring counties. I also very strongly suspect that if they happen to kill all the animals that are committing depredations upon their hogs, that some of them will find it necessary to be present at a coroner's inquest, because of the animal belonging to the human species.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SHERIFF—FEES—COMMITMENT.

Tallahassee, Fla., August 2, 1921.

Mr. W. W. Clark,
Milton, Fla.

Dear Sir:

Replying to your letter of the 1st instant, I beg to say:

It is my opinion that the Sheriff is entitled to a fee of 50c for each time he commits a prisoner to jail under or-

der of court. I do not think however, that this applies to cases where the prisoner is brought from the jail to the Court House to confer with attorneys, or where he is conducted back and forth to the Court House during the progress of court. I think under the facts stated in your letter, the Sheriff would be entitled to two fees for commitment.

Yours very truly,
 RIVERS BUFORD,
 Attorney General.

SEARCHES—WARRANTS—STILLS ACCIDENTALLY FOUND.

Tallahassee, Fla., August 5, 1921.

*Hon. B. D. Sturkie,
 Sheriff Pasco County,
 Dade City, Fla.*

Dear Sir:

Replying to your letter of the 1st instant, beg to say:

It is my opinion that you have the right to take possession of any rum still which you may find set up in condition to be operated as a rum still, and that the Judge of the Circuit Court, or the County Judge's Court, upon proper petition is authorized to issue an order to destroy the same. You would further have the right to swear out a warrant for anybody against whom you have sufficient evidence to prove guilty, and upon such warrant to make arrest and prosecute the defendant.

You are not authorized to search any person or private premises for distilling apparatus, or for liquor, without a

search warrant. The Legislature of 1921 provided the method of procuring and executing such search warrants.

Yours very truly,

RIVERS BUFORD,

Attorney General.

STATE EQUALIZER OF TAXES—EXPENSES AND
CLERICAL ASSISTANCE.

Tallahassee, Fla., August 6, 1921.

*Hon. Marion L. Dawson,
State Equalizer of Taxes,
Tallahassee, Fla.*

Dear Sir:

Replying to your request that I advise you of my construction of the following clause in Chapter 8584, Laws of Florida, Acts of 1921, to-wit:

“The salary and actual necessary expenses of said Equalizer, including clerical assistance herein provided, incurred in complying with the requirements of this Act, shall be paid by the State Treasurer, and a sum is hereby annually appropriated from funds not otherwise appropriated to carry out the provisions of this Act,”

I beg to say:

It is my opinion that this Section means that the State Equalizer of Taxes shall be paid the salary of \$4,000.00 per year, and all necessary expenses incurred by him in the discharge of the duties required of him under the provisions of said Section, including the pay of such clerical aid as in his judgment is necessary to carry out the performance of the duties provided in the Act.

It is my opinion that the question as to whether or not the necessity for the incurring of expenses, or whether or not the necessity for employing clerical aid exists, is a matter within the discretion of the State Equalizer of Taxes.

As the words "herein provided," as they appear in the above quoted paragraph, do not refer and can not be construed to refer to any other language in the Act, they must be considered as surplusage and of no effect, and, therefore, the Section is construed with these two words eliminated.

Yours very truly,

RIVERS BUFORD,

Attorney General.

BONDS—SCHOOL DISTRICT—NON-APPROVAL.

Tallahassee, Fla., August 8, 1921.

*Hon. C. A. Parker,
County Supt. Public Instruction,
Bartow, Fla.*

Dear Sir:

I have just wired you as follows:

"I cannot approve Ten Thousand Dollar Bond Issue Special Tax School District Number Four, Polk County. See letter."

I find that the record transmitted to me, and which I return to you herewith, discloses that the bond issue in the sum of Ten Thousand Dollars, authorized by Special Tax School District No. 4 of Polk County, Florida, was for the purpose of procuring funds necessary to purchase a school site in the sum of \$3,500.00, and the balance to liquidate the indebtedness of the district.

That part of the issue in the sum of \$3,500.00 for the pur-

pose of procuring funds to purchase a school site is legal and valid, but, in my opinion, the County Board of Public Instruction is not authorized to issue bonds to liquidate outstanding current indebtedness, and, therefore, the proposed bond issue for such purpose is invalid. See *Johnson v. Board of Public Instruction*, 88 So. 308, reported in Southern Reporter Advance Sheet of June 11, 1921.

Under the decision of the Supreme Court in the case above cited, I am forced to the conclusion that your issue pursuant to election of June 14, 1921, is not valid.

Yours very truly,

RIVERS BUFORD,

Attorney General.

STATE PLANT BOARD—CLAIM OF A. H. WOLYN.

Tallahassee, Fla., August 10, 1921.

Hon. J. T. Diamond,
Sec'y. State Plant Board,
Tallahassee, Fla.

Dear Sir:

I am in receipt of your letter of even date transmitting letter of July 7th from Hon. Wm. M. Flournoy, demanding payment of the claim of A. H. Wolyn by the State Plant Board in the sum of \$1,694.59.

This as a matter of fact may be a very just and equitable claim, but in my opinion the State Plant Board is without authority of law to pay the same, and therefore, I advise the State Plant Board to respectfully decline to pay the claim.

Yours very truly,

RIVERS BUFORD,

Attorney General.

P. S.—I herewith return Mr. Flournoy's letter to you.

R. B.

SHERIFF—FEES—MILEAGE.

Tallahassee, Fla., August 15, 1921.

*Hon. W. S. Lindsey,
Sheriff, Pinellas County,
Clearwater, Fla.*

Dear Sir:

Replying to your letter of the 12th instant, I beg to say that strietly technically speaking a Sheriff has no right to charge fees for any service which he does not actually perform, and therefore, if a person who has been arrested and who was not actually conveyed to the court from which the warrant issued objects to paying the fee for conveyance, the Sheriff is not legally entitled to such fee.

The Sheriff is entitled to mileage for conveyance from the place of arrest by the most practical and available route to the court, from which the warrant issues. The warrant directs the Sheriff to forthwith bring the defendant named therein before the Court, and the Sheriff is within his rights if he obeys the command contained in the warrant, but the warrant does not command the Sheriff to place the prisoner named therein in jail. The law contemplates that the prisoner may have an opportunity to appear before the court and receive the further orders of the court before he is incarcerated.

Yours very truly,

RIVERS BUFORD,

Attorney General.

TAXATION—LEVY BEFORE SALE OF BONDS.

Tallahassee, Fla., August 15, 1921.

*Hon. R. O. Baker,
Clerk Circuit Court,
Moore Haven, Fla.*

Dear Sir:

Replying to your letter of August 13th, beg to say:

It is my opinion that the Board of County Commissioners are not only not required to levy a tax to create a sinking fund and provide interest on Special Tax Road and Bridge District Bonds upon which no acceptable bid has been made and of which no sale is in prospect, but that such levy would be invalid.

This opinion is based upon the decision of the Supreme Court of the State of Florida, *in re: Osborne, et al., vs. Stripling, et al.*, which you will find reported in Vol. 88, Southern Reporter, page 265,—Advance Sheet of June 4th, 1921.

Inasmuch as the tax levy to provide interest and sinking fund upon a bond issue may not be levied until a fair bid for the issue has been obtained and the bonds have been executed and are ready for delivery, it is my opinion that the Board of County Commissioners may decline to issue bonds which have been authorized for any good cause by a proper resolution entered upon their minutes and thereafter may disregard such authorization and proceed to acquire authority to make an entirely different issue of bonds covering the same, a less, or a greater territory.

Yours very truly,

RIVERS BUFORD,

Attorney General.

JUSTICE OF THE PEACE—RE-DISTRICTING
COUNTY.

Tallahassee, Fla., August 16, 1921.

Mr. Jno. H. Carter,
Marianna, Fla.

Dear Sir:

In re: Justice of the Peace District.

Replying to your letter of August 15th beg to say:

It is my opinion that the Board of County Commissioners may re-district the county in such a manner as to create two Justice of the Peace Districts, but that they can not do so making the change effective immediately if there be now more than two Justices of the Peace commissioned in the county.

It is my opinion that the County Commissioners are limited by Section 3359 in their authority to enlarge a Justice of the Peace District when the order is to be immediately effective, but that the County Commissioners could by resolution divide the county into two Justice of the Peace Districts, designating in the resolution the district in which shall reside the Justice who shall be successor to the Justices residing in the abolished district, and therein providing that the order of abolition shall take effect and become operative as to each abolished district at the expiration of the term of office of the Justice of the Peace then commissioned; and that when the term of office of any Justice of the Peace District expires, or the office becomes vacant for any other cause, that thereupon that district shall become and be a part of the new district to be presided over by a Justice of the Peace residing at the place of within the district therein named, and that when the offices of all Justice of the Peace of all the abolished districts shall have terminated by expiration of time, or other-

wise, that all the territory embraced in such district shall become and be a part of the newly created district.

In as much as Justices of the Peace are constitutional officers, I am of the opinion that the Board of Commissioners are without authority (although the same may be implied by statute) to abolish an office which is at the time being held and occupied by a person acquiring and holding the same under the provisions of the Constitution.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SCHOOLS—ATTENDANCE OFFICER—COUNTY
SUPERINTENDENT MAY SERVE.

Tallahassee, Fla., August 17, 1921.

*Hon. J. B. Stweart,
County Judge,
Fernandina, Fla.*

Dear Judge:

It is my opinion that the position of attendance officer created by Chapter 7808, Laws of Florida, Acts of 1919, is merely an employment and is not an office, and therefore, there is neither any provision of the Constitution nor law of the State prohibiting the employment of the County Superintendent of Public Instruction to discharge such duties. It is also my opinion that the County Board of Public Instruction may so employ the County Superintendent of Public Instruction if it is deemed wise by them to do so.

Yours very truly,

RIVERS BUFORD,

Attorney General.

OFFICE RECORDS—BY WHOM FURNISHED.

Tallahassee, Fla., August 24, 1921.

*Hon. W. W. Clark,
Milton, Fla.*

Dear Sir:

I am in receipt of your letter asking advice for the Board of County Commissioners of your County, and replying thereto I beg to say:

It is my opinion that the County Commissioners are required to furnish only those books and blanks to county and district officials which are necessary to make and keep such records as are required by law.

I consider bill heads, letter heads, envelopes, blanks for deeds, mortgages, contracts, affidavits, warrants, petitions, orders and other matters of this kind, as being conveniences which may be properly used by the official in the discharge of his duties and by the use of which he eliminates the necessity of writing out all such papers in full, and for which he receives the same compensation in fees as if he did write them in full, and that therefore, he should bear the expense of same.

Yours very truly,

RIVERS BUFORD,

Attorney General.

BONDS, NINETY DAY COST—DEFAULT—
PROCEDURE.

Tallahassee, Fla., August 24, 1921.

*Hon. J. D. Raulerson,
Clerk Circuit Court,
Bartow, Fla.*

Dear Sir :

Replying to your letter of August 22nd, beg to say :

Section 6122 appears to be rather vague, but under my construction the following procedure should be had.

A bond accepted by the Sheriff to secure the payment of fine and costs imposed upon the conviction in a court of competent jurisdiction should be held by him until the due date, at which time the Sheriff should make demand upon the sureties and the defendant if possible for the payment of the bond; and if the bond is not promptly paid, then the Sheriff should return the bond to the court in which judgment against the defendant was rendered with his endorsement on the bond that default has been made in the payment, which endorsement he signs as Sheriff.

Thereupon, the Clerk of the Court in which judgment was entered against the defendant, or the Judge of said court if it has no Clerk, should enter upon his docket a statement of the fact that the bond was given by the defendant with the sureties, naming them, for the payment of the fine and costs in the sum of the amount named in the bond to be paid at the date named in the bond, and that default has been made in such payment, and that thereupon, judgment is entered against the defendant and the sureties upon the bond in the sum thereof, and that execution doth issue.

Judgments entered in the Courts of the Justices of the Peace and in the County Judges Courts and in the County

Courts should be transferred by transcript filed in the office of the Clerk of the Circuit Court, and a memorandum of the judgment should be entered in the docket of the Circuit Court provided for such judgments. The execution must issue from the court entering the judgment in all cases.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SEARCHES—DESIGNATION OF CAR OR HOUSE.

Tallahassee, Fla., August 26, 1921.

Hon. W. M. Griffin,
Sheriff,
Sebring, Fla.

Dear Sir:

I am very sorry that it is necessary for me to advise you that the law does not contemplate the issuing of a search warrant to search a car designated by name of car and license number. The warrant is required to authorize the search of some particular named individual and any vehicle which he may be traveling in, or in a house or part of a house which he may be occupying, or may be in the possession of.

Yours very truly,
RIVERS BUFORD,
Attorney General.

ELECTIONS—POLLS—DATE OF PAYMENT.

Tallahassee, Fla., August 29, 1921.

*Hon. J. S. Chewning,
Supervisor of Registration,
Cross City, Fla.*

Dear Sir:

Under the law of Florida, for a person to be qualified to vote in any election the poll tax, if she or he is liable for poll tax, must be paid on or before the second Saturday in the month preceding date of the election. In your case the election is to be held August 31st, which is the last day of the month. Therefore, the month immediately preceding the date of the election would begin to run on the last day of July, which was on Saturday and would be the first Saturday in the month preceding the date of the election, and the second Saturday in that month would fall on the 6th day of August, at which time the right to pay poll tax would cease.

Yours very truly,
RIVERS BUFORD,
Attorney General.

COUNTY FUNDS—TRANSFER.

Tallahassee, Fla., August 29, 1921.

*Mr. A. G. Hamlin,
DeLand, Fla.*

Dear Sir:

Replying to your letter of August 26th, with reference

to the course to be pursued by the Board of County Commissioners, I beg to say:

As the Board of County Commissioners are in no way under the jurisdiction of the office of the Attorney General I feel that it is not proper for me to involve myself in the affairs of the Board by advising them as to the policies to be pursued.

The law appears to me to be very plain, but the Board of County Commissioners can not spend more money for any purpose than is provided by the budget, and it occurs to me that the only safe way for a Board of County Commissioners to proceed when a budget appropriation has been exhausted and obligations have accrued in excess of the appropriation, is to let such excess stand as an open account and provide for the payment of the same in the ensuing budget and appropriation.

I do not think that the last clause of Section 1528, Revised General Statutes, as follows:

"All unexpended balances to the credit of any account at the end of the fiscal year shall revert to the fund from which the appropriation was made, but nothing herein shall be construed as prohibiting the reserving in the estimates a reasonable sum for contingencies and emergencies, and the appropriation of any part of said sum so reserved for any expense of the county authorized by law,"

contemplates reverting a surplus in one appropriation to the fund from which it was made and then using it to cover a deficiency in some other appropriation. It is my opinion that this clause means, that the surplus remaining in any appropriation shall revert to the fund from which it was appropriated, and is then available for use in the next appropriation, and that it also means that a reasonable sum may be reserved in any fund to be used for contingencies and emergencies which have not been taken into consideration in preparing the budget and in making the appropriation, but I think that when an item has been considered and

has been placed in the budget that the appropriation therefor limits the authorized expenditure for that purpose.

Yours very truly,

RIVERS BUFORD,

Attorney General.

BONDS, NINETY DAY COST—DEFAULT—RIGHTS
OF DEFENDANT.

Tallahassee, Fla., August 31, 1921.

*Hon. Jno. R. Willis,
Attorney for County Commissioners,
Bronson, Fla.*

Dear Sir:

I herewith return to you the bond and commitment in the case of the State of Florida vs. Meadow Smith, and replying to your letter concerning the same, I beg to say:

It is my opinion that neither the Sheriff nor the court has any authority to release sureties, who have executed a bond for the payment of fine and costs. Neither does the defendant get any credit upon his time imposed for service while he is at liberty under such a bond.

A defendant can not be taken into custody and required to begin the service of sentence until the bond under its own conditions becomes due and payable and default is made thereof. A defendant, being incarcerated under the commitment before the bond is due and payable, should be discharged under habeas corpus.

A bond accepted by the Sheriff to secure the payment of fine and costs imposed upon conviction in a court of competent jurisdiction, should be held by him until the due date, at which time the Sheriff should make demand upon

the sureties and the defendant if possible for the payment of the bond; and if the bond is not promptly paid, then the Sheriff should return the bond to the court in which judgment against the defendant was rendered, with his endorsement on the bond that default has been made in the payment, which endorsement he signs as Sheriff.

Thereupon, the Clerk of the Court in which judgment was entered against the defendant, or the Judge of said court if it has no clerk, should enter upon his docket a statement of the fact that the bond was given by the defendant with the sureties, naming them, for the payment of the fine and costs in the sum of the amount named in the bond to be paid at the date named in the bond, and that default has been made in such payment, and that thereupon, judgment is entered against the defendant and the sureties upon the bond in the sum thereof, and that execution doth issue.

Judgments entered in the Courts of the Justices of the Peace and in the County Judges' Courts and in the County Courts should be transferred by transcript filed in the office of the Clerk of the Circuit Court, and a memorandum of the judgment should be entered in the docket of the Circuit Court provided for such judgments. The execution must issue from the court entering the judgment in in all cases.

When the bond has been endorsed by the Sheriff and returned to the court in which the conviction was had, then a commitment should issue for the defendant for the full period of time imposed in his sentence, and he should be required to serve such time, unless the fine and cost is paid before the expiration of such term. When the fine and costs is paid prior to the expiration of the term, the defendant is entitled to be discharged at the time that the fine and costs is paid.

Yours very truly,

RIVERS BUFORD,

Attorney General.

ATTORNEY GENERAL—OPINIONS WRITTEN AND
TO HEADS OF DEPARTMENTS AFFECTED.

Tallahassee, Fla., August 31, 1921.

Mr. J. J. G. Cooper,
1013-1015 Heard Bldg.,
Jacksonville, Fla.

My dear Mr. Cooper:

I have your letter of August 30th.

Since I have been Attorney General I have not rendered, and shall not render, any oral or verbal opinion to be acted upon by any Department of the State Government.. It is my practice to require that all requests for advice from this office shall be in writing, and that all replies to such requests shall be made in writing.

I make it a rule not to render an opinion touching the duties of any official, except to the official whose duties are to be the subject of the opinion, and that such advice is not given upon the request of subordinates, but must come from the head of the department.

I have adopted the above rule because in my judgment it is the only way in which I can avoid being at variance with the department heads.

Therefore, there is no foundation for the statement that I have advised any hotel inspector as to whether or not a house of five rooms or more, in which any room was rented, was a rooming house coming within provisions applicable to hotels and rooming houses as defined in Article 2 of Chapter 12, Revised General Statutes of Florida, Sections 2124 to 2156, inclusive.

Should the Hotel Commissioner request an opinion from this office on the subject I would immediately comply with his request, but I am sure that you understand that as these matters are entirely under the supervision of his office, it

would not be proper for the Attorney General to render an opinion upon the subject, except upon such request.

Yours very truly,

RIVERS BUFORD,
Attorney General.

CHIROPRACTICS—EXAMINATIONS—
ELIGIBILITY.

Tallahassee, Fla., September 1, 1921.

Dr. E. B. Pritchard,
208-7 Dyal-Upchurch Bldg.,
Jacksonville, Fla.

Dear Doctor:

Replying to your letter of August 30th, beg to say that my construction of Section 9, Chapter 7821, Acts of 1919, is as follows:

A person to be eligible for examination before the Board of Chiropractic Examiners must be a graduate of a *chartered* Chiropractic School or College, and a certificate from any school or college other than *chartered* school or college would not entitle the applicant to an examination by your board.

It is not only necessary that the school or college must be a *chartered* institution, but it also must be an institution which at the time of the graduation of the applicant, prescribed a course of three years of six months each, or more, that is, it must have prescribed and required three courses of six months, or more, to be taken; each course in a separate year.

This statute may prove a hard requirement, because it may debar some very able men from taking the examina-

tion, but we can only construe and apply the law as we find it.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SCHOOLS—DISTRICT ELECTIONS.

Tallahassee, Fla., September 1, 1921

*Hon. D. H. Moore,
County Superintendent Public Instruction,
Tavares, Fla.*

Dear Sir:

Replying to your letter of August 30th, I beg to say:

It is my opinion that the County Board of Public Instruction has no authority whatever to declare a Special Tax School District election invalid and thereupon immediately call another election. If the election was held, then the statute prohibiting another election on the same subject being held within a year applies.

Yours very truly,
RIVERS BUFORD,
Attorney General.

COUNTY SUPERINTENDENT OF PUBLIC IN-
STRUCTION—DUTIES—COUNTERSIGNING
WARRANTS.

Tallahassee, Fla., September 6, 1921.

*Hon. P. F. Fisher,
Supt. Public Instruction,
Blountstown.*

Dear Sir:

I am in receipt of your letter of September 2nd, and in reply thereto beg to say:

The nearest that our Supreme Court has come to passing upon the question which you propound is in the case of McKinnon vs. The State, reported in 70 Fla., page 561, which case I would like for you to read for yourself.

I admit that there is considerable doubt in my mind as to whether or not it is your duty to countersign a warrant drawn on the public school fund for the payment of attorney's fees incurred by the County Board of Public Instruction in defending a suit brought against the County Board of Public Instruction, as it appears that the Board should certainly have the authority under the provisions of Section 454 and 447, Revised General Statutes, to do all things necessary to be done in the conduct of the affairs of the Board, but in view of the above cited decision, and also in view of the fact that the Supreme Court has held that the County Superintendent's salary could not be paid from the school fund, I think that you would be justified in refusing to sign the warrant until ordered to do so by a court of competent jurisdiction.

Yours very truly,

RIVERS BUFORD,

Attorney General.

TAXATION—OCCUPATIONAL LICENSE—
DROVERS.

Tallahassee, Fla., September 6, 1921.

*Hon. W. W. Stripling,
Tax Collector,
Ocala, Fla.*

Dear Sir:

Replying to your letter of the 3rd instant, beg to say:

Chapter 8592, Acts of 1921, appears to be so clear that there can be no question as to the intent of the Legislature. It is my opinion that persons bringing live stock of any kind into this State for sale, whether they sell the same from a sales stable or as a traveling drover, will be required to pay \$500.00 in each county in which they engage in the business.

Yours very truly,

RIVERS BUFORD,
Attorney General.

SHELL FISH—POOLING OF SALES.

Tallahassee, Fla., September 16, 1921.

*Hon. T. R. Hodges,
Shell Fish Commissioner,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of September 15th, I beg to say:
Under the provisions of Section 1259, Revised General

Statutes, I do not think that you can prohibit several fishermen pooling their interests and selling fish which they themselves catch without paying the license, as this statute excepts from the requirement to pay license the person who catches the fish, and under this exception two men or more may fish together or after fishing separately, may pool their fish and sell them together without violating any law.

Of course, this arrangement would have to be carried out in such a manner that it would not amount to a purchase by one of the parties of fish from the other parties before shipment, and as to whether or not the transaction is such as would come within the exception would depend in each instance upon the facts in the case.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SHELL FISH—PRIVILEGE TAX.

Tallahassee, Fla., September 16, 1921.

*Hon. T. R. Hodges,
Shell Fish Commissioner,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of the 15th instant, asking my opinion as to the construction of that part of Section 1238, Revised General Statutes of Florida, as amended by Chapter 8588, Acts of 1921, which pertains to the collection of two cents per barrel privilege tax, I beg to say:

It is my opinion, that this tax is chargeable against the

person who gathers the oysters, and I can not see how it can be construed otherwise.

“* * * there shall be and is hereby levied a special assessment forced contribution or privilege tax of two cents per barrel on each and every barrel of oysters or clams gathered from the waters of this State, whether from natural or artificial reefs, bedding or propagating grounds, for sale, and on all oysters and clams that are opened before they are measured in the shell for sale, a privilege tax of one cent per gallon or fraction thereof, shall be imposed.”

This clearly is the rental which the State demands of the person who fishes for oysters and clams upon the State's bottoms.

I can not see that it makes any material difference whether the person who gathers the oysters or clams pays the tax himself direct, or procures its payment by the person to whom he sells his catch.

Yours very truly,

RIVERS BUFORD,

Attorney General.

STATE BOARD OF HEALTH—SANITARY
NUISANCES—MUNICIPAL.

Tallahassee, Fla., September 19, 1921.

*Dr. George W. Simons, Jr.,
Chief Sanitary Engineer,
Jacksonville, Fla.*

Dear Sir:

Replying to your letter of the 16th instant, beg to say:

It is my opinion that Section 5524, Revised General Statutes applies to all officers of municipal governments

in this State, and that they may be prosecuted for violation thereof.

The provisions of Section 2157, Revised General Statutes, likewise apply to a municipality the same as to an individual, and the officers responsible may be required to abate a condition to which said Section applies by notice as is provided in Section 2158 and 2159, Revised General Statutes, and may also be prosecuted under the provisions of Section 5624, Revised General Statutes.

I am quite sure that the Governor will request any local Prosecuting Attorney to co-operate with you in any matter of this kind should you request him to do so, as the suit would be brought in the name of the State of Florida upon the relation of the State Board of Health.

Yours very truly,

RIVERS BUFORD,

Attorney General.

COUNTY JUDGES—FEES—HUNTING LICENSES.

Tallahassee, Fla., September 26, 1921.

*Hon. T. R. James,
County Judge,
Crestview, Fla.*

Dear Judge:

Replying to your letter of the 24th instant, I beg to say:

It is my opinion that the County Judge's fees for issuing Hunter's Licenses are controlled by Section 1298, Revised General Statutes of Florida.

The law of 1915 appears to have been amended by the adoption of the Revised General Statutes, and the fees paid to Game Wardens out of the money received from Hunting Licenses have been eliminated.

As I construe Chapter 8510, Acts of 1921, the clause at the end of Section 11, to-wit: "All moneys collected from these licenses shall be deposited in the County Treasury to the credit of the school fund" refers only to the licenses issued under the provisions of Section 11, and I seriously doubt the validity of this Section, because the provisions thereof are not included or referred to in the enacting clause. I deem it proper, however, for the officials to comply with the provisions of this Section until a court of competent jurisdiction shall have passed adversely upon its validity.

Yours very truly,
 RIVERS BUFORD,
 Attorney General.

CHIROPRACTIC—EXAMINATIONS— ELIGIBILITY.

Tallahassee, Fla., September 26, 1921.

*Dr. Cecil E. Foster,
 Secretary and Treasurer,
 Fla. State Bd. of Chiropractic Examiners,
 Jacksonville, Fla.*

Dear Doctor:

I would like very much to be able to conscientiously construe Chapter 7821 in such a way as to best suit the conditions which your Board advises are prevailing, but when you ask this office to construe a statute it becomes my sworn duty to give you the construction which in my opinion would be placed upon the statute by the highest court, and therefore, it might sometimes be better not to make application for the advice.

I construe the language used in Section 9 to mean that

each applicant shall have received training to the degree of a graduate in a Chartered Chiropractic school or college, which teaches a course of three years of six months each all in separate years,—that is, that the course must be of the length of at least six months, and no two courses and no part of two courses shall come within the same 12 months. If the course begins on September 1st, then the second course can not begin until September 1st of the following year. A course of six months could begin September 1st, 1921 and end March 1st, 1922; the second course could begin September 1st, 1922, and end March 1st, 1923, and the third course could begin September 1st, 1923, and end March 1st, 1924, but as I construe the statute a course of six months beginning September, 1921, and ending March, 1922, could not be followed by another course beginning before the opening of the next September term. Under the statute, it is my opinion that the term must not be of less length than six full months.

It is my opinion that you have no authority to accept an applicant who has had a course of study of two years of nine months each.

As to whether or not you will grant a license to an applicant who is qualified to make application under the provisions of the written law is largely a matter within your discretion, which you have a right to exercise in considering his application. For instance, it is for you to say whether or not upon consideration of his educational advantages, his experience pertaining to the matter of knowledge of the care of the sick, how long he has studied his profession, what collateral branches he has studied, the length of time he is engaged in clinical practice, his proofs submitted, and his evidence of good character and reputation in deciding whether or not you will accept him as a practitioner in this State.

Yours very truly,

RIVERS BUFORD,

Attorney General.

BOND TRUSTEES—COMPENSATION.

Tallahassee, Fla., October 4, 1921.

*Hon. W. W. Phillips, Chairman,
Board of Bond Trustees Columbia Co.,
Lake City, Fla.*

Dear Sir:

Replying to your letter of October 3rd, beg to say:

It is my opinion that Bond Trustees are entitled to receive as compensation for their services $1\frac{1}{2}\%$ on the first \$10,000.00 received by them as such Trustees, and $\frac{1}{2}$ of 1% upon the balance which may be received by them as such Trustees; to receive $1\frac{1}{2}\%$ upon the first \$10,000.00 paid out by them as such Trustees, and $\frac{1}{2}$ of 1% upon all the balance paid out by them as such Trustees. Therefore, if the bond issue is for a larger sum than \$10,000.00 they shall receive $1\frac{1}{2}\%$ on the first \$10,000 received and $\frac{1}{2}$ of 1% on the balance received, whether the balance is received at the same time or at a later date, or whether it is received as a part of the principal of the bond issue, or is received by way of annual installments from the Tax Collector to be applied to interest and sinking fund; and they would be entitled to like amounts for paying out the funds so received.

All transactions connected with the bond issue will be construed as one continuous operation, and the Trustees would only be entitled to the $1\frac{1}{2}\%$ on the first \$10,000.00 received by them and $1\frac{1}{2}\%$ on the first \$10,000.00 paid out by them, after which their compensation would be based upon $\frac{1}{2}$ of 1%.

Yours very truly,

RIVERS BUFORD,

Attorney General.

ROADS AND BRIDGES—RAILROAD CROSSINGS—
CONSTRUCTION AND MAINTENANCE.

Tallahassee, Fla., October 5, 1921.

*Hon. H. B. Phillips, Chairman,
State Road Department,
Tallahassee, Fla.*

Dear Sir:

In re: Highway and Railroad Crossings.

Replying to your favor of the 21st ult., relative to the proposed crossing of the Seaboard Air Line Railroad by public highway near Sanderson, I beg to advise as follows:

The construction and maintenance of safe and convenient highway crossings by a railroad company at its own expense at points where its railroad is crossed by a public road is a duty imposed by law upon such company; and no permission of such company is required for the location and construction of a public highway across its tracks or right of way.

Nor can a railroad company impose or require any conditions or terms by contract or otherwise upon the State, a county, or the State Road Department, relative to the crossing of its railroad by a public highway, as such crossing is an absolute right of the public and not a privilege which the railroad company may grant or withhold.

The statute (Sec. 4597, *et seq.*, Revised General Statutes) imposing upon railroad companies the duty of constructing and maintaining safe and convenient highway crossings is merely declaration of the common law, and imposes no other or greater duty upon such company than exists independently of it, though providing when and how performance of the duty may be required and enforced.

Nor are the highway crossings which railroad companies are required to construct and maintain at their own expense limited to the space actually covered or occupied by its tracks,—rails and cross-ties,—but extends to and includes the full width of its right of way as well as the full width of the highway thereon.

That the law is as above state is established by an overwhelming abundance of authority, though our statute has not been construed by our Supreme Court, except inferentially in *McDonald vs. L. & N. R. R. Co.*, 65 Fla. 310; 61 Sou. 580.

Of the many authorities directly in point, I cite a few which will open the door to as many more of like character and effect as one may care to examine:

Elliott on Roads and Streets, (2 Ed.) Sec. 222.

Elliott on Railroads, Secs. 1097, 1098, 1102.

State ex rel. vs. St. Paul M. & M. Ry. Co., 108 N. W. 261; Affirmed, 214 U. S. 497; 298 L. R. A. (U. S.) 298.

Pittsburg, C. C. & St. P. Ry. Co. vs. Gregg, 102 N. E. 961.

Northern Pac. Ry. Co. vs. Duluth, 208 U. S. 583.

C. M. St. P. Ry. Co., vs. Minneapolis, 232 U. S. 430.

Great Northern Ry. Co. vs. Clara City, 246 U. S. 434.

C. I. & W. Ry. Co. vs. Connersville, 218 U. S. 336.

The only prerequisite to the enforcement of the right to such a highway crossing and of the duty resting upon the railroad company to construct it, is that the highway, of which "such crossing forms or is to form a part, must" be established in some manner authorized by law.

McDonald vs. L. & N. R. R. Co., 65 Fla. 310; 61 Sou. 590.

No condemnation proceedings are necessary to enable the State Road Department or County Commissioners to establish a highway across the right of way of a railroad; but in view of the fact that the statute (Revised General

Statutes, Secs. 4597-4603) vests only in the Boards of County Commissioners the authority and power to require railroad companies to construct and maintain highway crossings, the Board of County Commissioners of Baker County should take action in the matter in accordance with the statute.

And if the road in question has not been established as a public road or highway by the Board of County Commissioners in accordance with the statute, it should be so established, of course, before the railroad company is or can be required to construct the crossing.

Not only is no contract with or permission from the railroad company necessary for crossing its right of way or to require it to construct and maintain a safe and convenient crossing, as above stated, but, may I be permitted to suggest, in my opinion, in view of the decision in *F. E. C. Ry. Co. vs. Miami*, 79 Sou. 682, that no contract whatever should be made with a railroad company to secure that to which the State is entitled as of right and by law, or that might tend to lessen or impair the duty and liability imposed by law upon such company.

Yours very truly,

RIVERS BUFORD,

Attorney General.

OFFICERS—COUNTY MAY BE MUNICIPAL.

Tallahassee, Fla., October 5, 1921.

*Hon. Thomas J. Watts,
Chipley, Fla.*

Dear Tom:

Replying to your letter of October 4th, beg to say:
Our courts have uniformly held that the holding of a

State or county office does not preclude a person from at the same time holding a municipal office. This question was decided in point by our Supreme Court upon the question as to whether or not a Sheriff was eligible to the position of Town Marshal. See, Attorney General vs. Connors, 27 Fla. 329.

Yours very truly,
RIVERS BUFORD,
Attorney General.

GAME—HUNTING LICENSES—EXEMPTIONS.

Tallahassee, Fla., October 6, 1921.

*Hon. T. R. James,
County Judge,
Crestview, Fla.*

Dear Judge:

Replying to your letter of the 4th instant, I beg to say:

It is my opinion that the provisions of Section 1295, Revised General Statutes of Florida, continue in force although certain provisions which are contained in this section were not mentioned in the amendment to Section 5792, as contained in Chapter 8510, Acts of 1921.

The legislative intent is clearly shown by the fact that certain sections immediately preceding Section 1295 and certain sections immediately following Section 1295 were amended by Chapter 8510, but Section 1295 was left as written in the Revised General Statutes. Therefore, Section 5792 as amended must be construed as not applying to the exceptions definitely made by Section 1295.

Yours very truly,
RIVERS BUFORD,
Attorney General.

MERCHANTS—ORDERS AND DELIVERIES.

Tallahassee, Fla., October 6, 1921.

*Hon. Henry K. Morse,
County Judge,
Titusville, Fla.*

Dear Sir:

Replying to your letter of the 4th instant, beg to say:

It has been the ruling of this office that a merchant having a regular place of business was authorized under his Merchant's License to deliver to his customers any goods which he is authorized to carry in stock, and that it is not necessary that he have a specific order for the goods before the same are taken from his place of business. But that in the conduct of his business he may solicit orders from door to door and may deliver his wares from his wagon at the time or at such other time as suits the customer.

This theory of the law has been upheld by the courts and I think unquestionably is correct.

Yours very truly,

RIVERS BUFORD,

Attorney General.

BONDS, FINE AND COST—SURETIES NOT RELIEVED BY DELIVERING DEFENDANT.

Tallahassee, Fla., October 10, 1921.

*Hon. W. B. Gainer,
Fountain, Fla.*

Dear Sir:

Replying to your letter of the 8th instant, beg to say:
Persons executing a fine and cost bond can not be re-

lieved by delivering up the defendant to serve the sentence.

A fine and cost bond is not an appearance bond, but is a bond to pay the judgment and if it is not paid at maturity it becomes the duty of the Sheriff to make his return thereon, stating payment has not been made and to deliver the same to the court from which it was issued. Thereupon, judgment is issued for the amount thereof against the sureties, and execution is issued upon this judgment. At the same time it is proper for the Sheriff to take a commitment for the defendant and put him to serve the sentence until the fine and costs shall have been paid or the sentence served.

Writ of habeas corpus would lie to release the defendant from custody from any time prior to the maturity date of the bond.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SHERIFF—FEES—EXECUTION VENIRE.

Tallahassee, Fla., October 12, 1921.

*Hon. W. M. Griffin,
Sheriff Highlands County,
Sebring, Fla.*

Dear Sir:

My construction of the statute is that the Sheriff is only entitled to \$5.00 for executing a venire and his mileage actually traveled in accomplishing the execution of the same.

The statute does not, in my opinion, contemplate that

the Sheriff is entitled to any other fees for executing the venire. To execute a venire the Sheriff must make and deliver subpoenas to each of the persons named in the venire and must make his return on the venire; all of which constitutes the execution of the venire.

Yours very truly,

RIVERS BUFORD,

Attorney General.

GAMBLING—PUNCH BOARDS.

Tallahassee, Fla., October 13, 1921.

*Hon. W. A. McCullar,
Jasper, Fla.*

Dear Sir:

It is my opinion that it is unlawful to operate punch boards in the State of Florida.

I think that such devices are within the purview of Section 5511, Revised General Statutes of Florida, 1920.

Yours very truly,

RIVERS BUFORD,

Attorney General.

GAME—HUNTING LICENSES—EXEMPTIONS.

Tallahassee, Fla., October 17, 1921.

*Hon. E. M. Tally,
County Judge, Lake County,
Tavares, Fla.*

My dear Judge:

Replying to your letter of October 14th, beg to say:

In the construction of statutes, all existing provisions applicable to one and the same thing must be construed together. Therefore, we must construe Section 5792, Revised General Statutes of Florida, as amended by the Acts of 1921, in connection with Section 1295, Revised General Statutes of Florida, and consider them both as if they had been enacted at the same time. When we do this we give force to the words, "without first procuring a hunter's license as herein provided." Then turning to Section 1295, we observe that it is therein provided, "No license shall be required of persons hunting within the limits of the voting precinct in which they actually reside, or of resident Confederate Veterans who are entitled to the payment of a pension under the laws of Florida." And when so considered together there will appear no conflict between the two Sections.

That this was the intent of the Legislature must be assumed because of the fact that the Legislature in Chapter 8510, amended Sections 1292, 1293 and 1294 and did not amend Section 1295 above quoted, but left it in full force and effect.

Yours very truly,
RIVERS BUFORD,
Attorney General.

GAME WARDEN—COMPENSATION.

Tallahassee, Fla., October 19, 1921.

*Hon. T. L. Lamb,
1207 East 16th St.,
Jacksonville, Fla.*

Dear Sir:

I am very sorry that you have requested my opinion as to the construction of Section 1795, Revised General Statutes, because upon receipt of this request it becomes my duty to advise you that in my opinion the Section is invalid.

I think, however, that the County Commissioners have just as much authority to make your salary \$600.00 per annum as to make it \$100.00 per annum.

Yours very truly,

RIVERS BUFORD,
Attorney General.

COUNTY JUDGE—TRANSFERS.

Tallahassee, Fla., October 20, 1921.

*Hon. J. Irvin Walden,
County Judge, DeSoto County,
Arcadia, Fla.*

Dear Judge:

Replying to your letter of the 19th instant, I beg to say:
It is my opinion that under the provisions of Chapter 8483, Acts of 1921, the Governor is authorized to transfer

any County Judge to preside or to act in any lawful capacity of County Judge in lieu of a disqualified County Judge. The County Judge in a county having established a County Court is the Judge of the County Court, and should such Judge be disqualified to preside in a trial or hearing of any cause in such court, then the Governor could transfer any other County Judge to perform the duties of the County Judge of that county, which duties include the duty of presiding as Judge of the County Court.

Yours very truly,
 RIVERS BUFORD,
 Attorney General.

GAMBLING—SUIT CLUBS.

Tallahassee, Fla., October 22, 1921.

*The Heitman Clothing Company,
 Fort Myers, Fla.*

Gentlemen:

Replying to your letter of the 18th instant, I beg to say:
 It is my opinion that a suit club as is suggested in your letter is a lottery, and is prohibited under the laws of the State of Florida.

Yours very truly,
 RIVERS BUFORD,
 Attorney General.

GAME—LICENSES—FUR BEARING ANIMALS.

Tallahassee, Fla., October 24, 1921.

*Hon. L. E. Futch,
County Judge, Marion County,
Ocala, Fla.*

Dear Judge:

Replying to your letter of the 20th instant, I beg to say:

I have not prescribed any form for licenses to hunt for fur bearing animals, but have simply advised the County Judges to change the regular forms by inserting whatever they may deem necessary to make it a special license for hunting fur bearing animals.

I have refrained from doing any official act which would stamp Section 11 of Chapter 8510 with my approval, because I am not willing to vouch for its validity. At the same time I do not think that it is proper for the office of Attorney General to assume to declare a legislative act invalid and to assume to advise officials charged with the duty of enforcing such act to disregard it. Therefore, I am leaving the construction of this section to those officials whose duty it may be to enforce it. I deem it entirely proper for any County Judge to place his construction upon the provisions of the act, or upon the validity of the act until such time as a court of higher jurisdiction shall have placed a different construction upon the same.

Yours very truly,

RIVERS BUFORD,
Attorney General.

ELECTIONS—QUALIFICATIONS—POLLS—
PROPERTY—WOMEN.

Tallahassee, Fla., October 25, 1921.

*Mr. W. H. Anderson,
Williston, Fla.*

Dear Sir:

Replying to your letter of the 24th instant, beg to say:

Women are eligible to qualify to vote in a Special Tax School District election. To be qualified to vote, however, in such election, a woman would be required to meet the same prerequisites as men are required to meet to vote in such election, except that because of becoming eligible to qualify in the year 1920 a woman could not be denied the right to vote because of not having paid a poll tax for that year. This is provided in Chapter 8583, Acts of 1921.

As the question has been repeatedly asked me and might occur to you, I will say that a married woman can not vote in an election where ownership of property is a qualification unless she owns property in her own name. In other words, a wife can not vote upon property vested in the husband, neither can a husband vote upon property vested in the wife.

Yours very truly,

RIVERS BUFORD,
Attorney General.

WEAPONS—REPEATING RIFLES—LICENSE
VALID THROUGHOUT STATE.

Tallahassee, Fla., October 26, 1921.

*Hon. F. S. Wright,
City Tax Assessor,
Tampa, Fla.*

Dear Sir:

In my opinion a license to carry a repeating rifle when issued is good throughout the State, because as you observe the bond is to the Governor of the State of Florida and the statute requires only one bond and one license for the privilege.

Yours very truly,
RIVERS BUFORD,
Attorney General.

FINES AND COSTS—DEPOSIT IN FINE AND FOR-
FEITURE FUND AND NOT SCHOOL FUND.

Tallahassee, Fla., October 28, 1921.

*Hon. James S. Rickards,
County Supt. Public Instruction,
Ft. Lauderdale, Fla.*

Dear Sir:

Replying to your letter of the 26th instant, beg to say that the provision which you refer to in Section 9 of Article XII of the Constitution of the State of Florida is repealed by Section 9 of Article XVI of the Constitution

adopted in 1894. See Board of Public Instruction, Polk County v. County Commissioners, 58 Fla., 391.

Yours very truly,

RIVERS BUFORD,
Attorney General.

SHELL FISH—CLOSED SEASON—SHIPMENTS
SALT CURED FISH.

Tallahassee, Fla., November 4, 1921.

*Hon. T. R. Hodges,
Shell Fish Commissioner,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of the 1st inst., requesting that I advise you as to my construction of Section 5828, Revised General Statutes, I beg to say:

It is my opinion that the prohibition created by this Section applies only to fresh mullet unsalted, or freshly salted mullet, caught during the closed season.

The words "Provided, however, that the time for such disposal and shipment shall not extend beyond ten days after the beginning of such closed season" apply only to fresh mullet unsalted, or freshly salted mullet, and no part of the said Section applies to salt cured mullet.

Any other construction of said section would be unjust, unfair and unreasonable, and we must assume that the author of the law had some knowledge of the fishing industry, and that he used such language as is common to such industry, and, therefore, in using the words "fresh, or unsalted, or freshly salted mullet" that he thereby limited the application of the statute in a manner which

would be understood by all persons familiar with the business, and that this limitation was for the express purpose of allowing the unhampered shipment and transportation of salt cured mullet, a large quantity of which must always be found remaining on hand in the fisheries at the end of any ordinary open season.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SCHOOLS—ARMISTICE DAY—OBSERVANCE.

Tallahassee, Fla., November 5, 1921.

*Hon. F. S. Hartsfield,
County Superintendent,
Tallahassee, Fla.*

Dear Sir:

Replying to your recent letter I beg to state that November 11th is by the President's Proclamation a National Holiday, and by statute it is a Legal Holiday in the State of Florida. It is, therefore, entirely proper for it to be observed as a holiday by all public schools.

Yours very truly,
RIVERS BUFORD,
Attorney General.

PRISONERS—DISCHARGE—TRANSPORTATION.

Tallahassee, Fla., November 7, 1921.

Mr. W. W. Clark,
Milton, Fla.

Dear Sir :

Replying to your letter of November 4th and answering your questions in the order in which they are propounded, I beg to say:

First. Where defendant is convicted of a misdemeanor and is delivered by the Sheriff to the contractor of county convicts and serves any part of his sentence, it becomes the duty of the County Commissioners to provide money and transportation to be furnished him under the provisions of Section 6217, upon being discharged. In other words, under this section of the statutes a convict having entered upon serving his sentence pursuant to conviction is entitled to receive the benefits of the statute.

Second. Where a defendant is convicted of a misdemeanor and is sentenced to pay fine and costs, or to serve a certain term of imprisonment in default thereof, and thereupon executing a stay bond for the payment of the fine and costs and default is made in the payment of the bond at maturity, the defendant should be re-taken by the Sheriff, a commitment issued and he should be put to the serving of his sentence. The Sheriff should at the same time certify that default has been made in the payment of the bond, and the court should issue execution against the sureties and the Sheriff should thereupon, if possible, force the payment of the execution. As soon as the execution is paid the defendant should be immediately discharged and the county should thereupon pay the transportation of the convict back to the place from which he was sentenced and the amount directed by the statute to be paid to him.

Third. The statute does not appear to contemplate a deduction for time served in a case where a bond is paid upon execution after default, but it is my opinion that the county must under such conditions pay the transportation charges provided in the section above referred to, together with the sum of money therein named.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SEARCHES—PLACES OF CONFIDENCE GAMES.

Tallahassee, Fla., November 8, 1921.

*Hon. E. E. Boyce,
Sheriff, St. Johns County,
St. Augustine, Fla.*

Dear Sheriff:

You will find special statute against Wire Tappers on page 184, Acts of 1921.

I assume that you are familiar with the statute which authorizes you to enter and search a place which you have reason to believe is being operated as a gambling house, but there has been no statute enacted specifically authorizing a Sheriff to enter a place in which he has reason to believe that a confidence game is being conducted. But it is my opinion that if you do have reason to believe that such business is being conducted in any particular place that you may make affidavit before the County Judge, setting up the facts upon which you base your opinion, and if he deems those facts sufficient to warrant, then he would be authorized to issue you a search warrant commanding the search of the place and you would be thereby author-

ized to enter and search such place, and seize any paraphernalia which you may find therein tending to prove the guilt of persons connected with the same.

Give Sabatte and all the other boys my best regards,
I am,

Yours very truly,

RIVERS BUFORD,

Attorney General.

SHERIFFS—FEES—POPULATION OF COUNTY
BY LAST CENSUS.

Tallahassee, Fla., November 12, 1921.

*Hon. G. E. McCaskill,
Atty. Board of County Commissioners,
Miami, Fla.*

Dear Sir:

Replying to your letter of November 9th, I beg to say:

I have carefully considered Chapter 7886, Acts of 1919, together with other statutes where the census of population is made the basis upon which the statute is to operate, and my construction necessarily is that when a county is shown by a census taken under authority either of the State law or of the Federal law to have a population of more than 40,000 people, then the fees provided as compensation for Sheriffs in counties of over 40,000 applies. I think, however, that before these fees can be applied that it would be necessary for the County Commissioners to obtain a certificate from the proper authorities showing that the census of county had been taken under authority either of State law or of Federal law, and that by such

census, so lawfully taken, that the population of the county at the last taken census was 40,000 or more.

Should it be contended that the difference in fees provided under Chapter 7886 applies only to those counties in which the population was more than 40,000 by the last taken census at the time the Act was passed, then the Act would present the fatally defective feature of not being uniform in its operation.

It appears that there is no ambiguity in the language used and that the language clearly indicates that the fees prescribed as compensation to be paid in counties having a population of more than 40,000 at the last taken census are to be applied in each county as that county comes into the class having more than 40,000 population.

Of course, you understand that county officers are not bound by the opinion of the Attorney General in matters of this kind, as the office of the Attorney General has no supervision or control over county officers, and in fact under the law it is not required to render legal advice to such officers. These opinions are rendered to county officers merely as a matter of courtesy, and should the Board of County Commisisoners or any other county officer feel that the opinion of the Attorney General is not a correct view of the law, no impropriety would be committed by having the question judicially determined in a court action.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SUNDAY—BASEBALL GAMES.

Tallahassee, Fla., November 17, 1921.

*Mr. J. H. Wyse,
South Bay, Fla.*

Dear Sir:

Your inquiry of the 11th inst., has been received and noted.

In my opinion it is unlawful to play baseball on Sunday in this State under any circumstances, and I know of no decision of the Supreme Court to the contrary.

The Attorney General is not authorized to advise in matters of this kind, and therefore this letter can not be considered as an official expression from this office.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SCHOOLS—DISTRICTS—ENLARGEMENT.

Tallahassee, Fla., November 18, 1921.

*Mr. A. M. Singletary,
Jennings, Fla.*

Dear Sir:

Your letter of the 16th instant has been received and noted.

In my opinion, the question of extending the limits of a Special Tax School District is to be determined by the voters residing in the territory constituting the proposed

enlarged district just as if the election was for the creation of a Special Tax School District in such territory. Qualified voters residing in the existing district and in the territory to be annexed thereto are upon the same footing and equally entitled to vote in such election.

The Attorney General is not authorized to officially advise in matters of this kind, and, therefore, what is stated in this letter is not to be regarded as an official expression from this office.

Yours very truly,

RIVERS BUFORD,

Attorney General.

INTOXICATING LIQUORS—TRANSPORTATION.

Tallahassee, Fla., November 23, 1921.

*Mr. A. L. Allen,
Federal Prohibition Director,
Tampa, Fla.*

Dear Sir:

Replying to your letter of the 15th instant beg to say:

In my opinion the transportation of intoxicating liquor within the State of Florida, or from out of the State of Florida into the State of Florida, can not lawfully be permitted.

If such permits were granted they would become a bar to law enforcement.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SHELL FISH—CLOSED SEASON—FRESH FISH
—FROZEN OR ICED.

Tallahassee, Fla., November 23, 1921.

*Hon. T. R. Hodges,
Shell Fish Commissioner,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of the 19th inst., in which you quote a part of Section 5827, Revised General Statutes. reading as follows:

“That it shall be unlawful for any person, persons, firm or corporation to have in their possession or ship any of the fish known as mullet or any fresh or freshly salted mullet roe during closed season as provided by statute.”

and asking whether or not under this Section fish kept fresh by ice or freezing process can be transported, I beg to say:

It is my opinion that the statute does not contemplate that the shipment of fish kept fresh by the use of ice or a freezing process may be shipped after ten days succeeding the end of the open season. Such fish would remain fresh fish just so long as they remained iced or frozen and would not have become cured fish by such a process. and the law prohibits the shipment of all fresh fish.

Yours very truly,

RIVERS BUFORD,
Attorney General.

MARRIAGE—LICENSES—AGE REQUIREMENTS.

Tallahassee, Fla., November 23, 1921

*W. J. Rogers,
Mulberry, Fla.*

Dear Sir:

It is unlawful for any person to issue marriage license to a boy or a girl in this State under 21 years of age, unless such minor produces a written consent of the parents.

Yours very truly,

RIVERS BUFORD,

Attorney General.

STATE BOARD OF HEALTH—BURIAL DECEASED PATIENTS.

Tallahassee, Fla., November 30, 1921.

*Dr. C. T. Young, Pres.,
State Board of Health,
Plant City, Fla.*

Dear Sir:

Replying to your letter of November 28th, asking that I advise you whether or not in my opinion the State Board of Health should pay the bill presented by Marcus Conant for burial expense of C. Anderson, a late patient in the Crippled Childrens' Department of the State Board of Health, I beg to say: .

It is my opinion that this is a proper charge against the State Board of Health.

The methods and course to be pursued in such cases are within the discretion of the State Board of Health, that is, the State Board of Health could either pursue the course which has heretofore been pursued, or else it could arrange for a less expensive disposition of the bodies by a local burial, except in cases where relatives are in a position to pay for and would pay for the additional expense of embalming and transportation.

If I may assume, however, to offer a suggestion, it would be that the method heretofore in vogue be continued. The difference between procuring and preparing a grave and interment of a body and the cost of embalming and transportation would amount to very little in each case, and as only indigent children are treated, it is fair to assume that relatives would not be in a position to pay the difference, and I think the State can afford to pay the little difference for the benefit of the poor bereaved parents in such cases.

I herewith return correspondence to you.

Yours very truly,

RIVERS BUFORD,

Attorney General.

BONDS—TRUSTEES—SALE.

Tallahassee, Fla., December 3, 1921.

*Mr. Edw. A. Stoll,
Sparkman, Fla.*

Dear Sir:

Replying to your letter of the 29th ult., beg to say that without having before me a transcript of the record of all proceedings under which bond issue referred to in your

letter was made, it would be impossible for me to advise you in the premises. I will say, however, that it is usual when a bond election is held to elect trustees of the bond issue. In fact, it is necessary to have these trustees as only such trustees are authorized to receive and pay out money received from a bond issue. And when bonds have been sold and the money derived from the same, the trustees can be compelled to expend the money for the purposes for which the bonds were issued, and until such bonds are sold no tax can lawfully be collected for the same, as the law does not contemplate there has been any issue of bonds until such bonds have been sold and become an outstanding obligation.

Yours very truly,
 RIVERS BUFORD,
 Attorney General.

PRISONERS—MEDICAL SERVICE IN JAIL—
 SELECTION.

Tallahassee, Fla., December 8, 1921.

*Hon. B. D. Sturkie,
 Sheriff, Pasco County,
 Dade City, Fla.*

Dear Sheriff:

I am in receipt of your letter of December 6th.

I am unable to find where the Supreme Court in this State has ever passed upon the question as to whether or not a Sheriff is authorized to select a physician to attend prisoners in his custody.

I find no statute authorizing the Board of County Commissioners to select any particular individual as County Physician, neither do I find any specific statute authoriz-

ing the Sheriff to employ a physician at the expense of the county, and for these reasons I am not in a position to advise you officially as to what course to pursue. My opinion on this matter not being based upon a statute, nor upon any decision of the Supreme Court, could have no binding effect either upon you or upon the Board of County Commissioners.

I will say, however, that a Sheriff is responsible for the proper care of prisoners in his custody, and is liable for any injury which the prisoner may suffer by reason of his (the Sheriff's) negligence, and, therefore, the Sheriff must exercise his discretion where his action is not controlled by the order of court in caring for prisoners in his custody. It is, therefore, the duty of the Sheriff to procure for a prisoner, when the same is needed, such medical attention as in the judgment of the Sheriff is necessary for the well-being of the prisoner. I think that should a Sheriff accept medical attention for a prisoner which the Sheriff himself believes to be unreliable and inadequate, then the Sheriff would be responsible for any injury or damage resulting from such course.

I also feel quite sure that if a Sheriff determines that a prisoner in his custody requires medical attention, and so determining, should call a physician in whom he has confidence, to attend the prisoner and render the necessary medical attention, that the Sheriff would thereby discharge his duty to the prisoner in that respect and the county would be liable for the compensation due the physician for services so had and obtained.

Yours very truly,

RIVERS BUFORD,

Attorney General.

JAILS—JANITORS.

Tallahassee, Fla., December, 27, 1921.

*Hon. J. Turner Butler,
Bisbee Bldg.,
Jacksonville, Fla.*

Dear Senator:

Replying to your letter of December 24th with reference to the authority of the Board of County Commissioners to employ a janitor to keep the jail in a clean and sanitary condition, I beg to say:

It is my opinion that the duty of keeping the jail in a clean and sanitary condition devolves upon the Sheriff, who is responsible for the inmates of the jail. I deem it to be the duty of the Board of County Commissioners, however, to furnish the Sheriff such commodities as may be necessary for this purpose in the way of bedding, water connections, paints, disinfectants, brooms, brushes and other things necessary for this purpose; but the physical act of keeping the jail under the proper condition is the duty resting upon the Sheriff, which he may either perform in person or by the employment of proper help, and so far as I know this practice obtains throughout the State.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SEARCHES — GAMBLING HOUSES — INTOXICATING LIQUORS.

Tallahassee, Fla., January, 5, 1922.

*Mr. E. D. Sims,
Constable, 12th District,
Seabreeze, Fla.*

Dear Sir:

Your letter of December 30th addressed to Hon. H. Clay Crawford has been referred to me for reply.

Under my construction of the law, you have authority to enter any building where you have reason to believe that gambling is being conducted, and if you find gambling in progress to arrest the participants and confiscate all money and paraphernalia in use in the game.

You are authorized to arrest any person whom you may find unlawfully selling or transporting whisky, but you have no authority to hold up any person, or to make any search of any person or any vehicle, or any house, booth or tent, in a search for liquor without having first procured a search warrant authorizing such search Chapter 8471, Acts of 1921, provides a method of obtaining search warrants in such cases.

Yours very truly,

RIVERS BUFORD,

Attorney General.

MOTOR VEHICLES—LICENSES—SCHOOL BUSES
NOT FOR HIRE.

Tallahassee, Fla., January 7, 1922.

*Hon. C. W. Hunter,
Ocala, Fla.,*

Dear Mr. Hunter:

Pursuant to your letter of January 2nd, I have had a

talk with Hon. Ernest Amos, Comptroller, and Mr. R. A. Gray, Chief Clerk in the Automobile License Department of the Comptroller's Office, with reference to the attitude which will be assumed by such Department as to license on school busses.

The result is that we have arrived at the conclusion that an automobile buss, operated exclusively for the purpose of transporting children to and from public schools, is not to be construed as being a motor vehicle *for hire*. I am sure it was not the intent of the Legislature that such vehicles should be considered as automobiles for hire, and that the term "for hire" was intended to cover those vehicles which are held out to the use of the general public for hire and fare.

The operators of the busses which are used exclusively for transporting children to and from public schools, however, must not use these vehicles for the transportation of other persons for hire, and should they do so they will not only be liable for the license but will also be liable for prosecution for operating such vehicle for hire without license.

I think that you will receive a communication from the Comptroller stating that the busses employed by your County School Board under a contract as has been submitted to me will be issued licenses based upon weight and will not be required to pay the additional cost upon licenses of motor vehicles for hire.

Yours very truly,

RIVERS BUFORD,

Attorney General.

CONSTABLE—JURISDICTION.

Tallahassee, Fla., January 9, 1922.

*Hon. W. B. Douglas,
Sheriff, Columbia County,
Lake City, Fla.*

Dear Sir:

Replying to your request, I beg to advise that it is my opinion that a constable is authorized to serve process in any district of the county in which he is elected in which such process may be lawfully served. See Section 2897, Revised General Statutes.

I do not think that a constable is authorized to act officially beyond the territorial limits of the county in which he holds office.

A constable is the executive officer of the court of the Justice of the Peace District in which he is elected, and is entitled to preference in the service of process issuing from that court. This, however, is not required by statute and such Justice of the Peace would be within his legal right to deliver process to the Sheriff or even to another constable of another district. The Sheriff, of course, is the executive officer of the County Judge's Court, and as such, I think is entitled to preference in the service of process issuing from such court.

This, however, is a matter in which the County Judge has the legal right to determine whether he will place process issued from his court into the hands of the Sheriff for service or in the hands of the constable for service, and no other person has a right to select the officer who shall serve such process.

The office of the Attorney General is not authorized under the law to render opinions in matters of this kind,

and, therefore, you are not to consider this as an official expression from this office.

Yours very truly,

RIVERS BUFORD,

Attorney General.

COUNTY COMMISSIONERS—PURCHASE FROM
MEMBERS OF BOARD.

Tallahassee, Fla., January 9, 1922.

*Mr. H. R. Ferrran, Chairman,
County Commissioners, Lake County,
Eustis, Fla.*

Dear Sir:

Replying to your letter of January 6th, beg to say:

I do not think that it is proper for the Board of County Commissioners to purchase goods, wares or merchandise from a business owned, managed or controlled by a member of the Board of County Commissioners, nor in which any member of the Board of County Commissioners is interested as a partner, and, therefore, I do not think it would be proper for your business to bid on tools, material or equipment to be purchased by the county. You could, however, do the county the service which you suggest by getting the people from whom you purchase your goods to make the county the same, or a better price, than that they would make to you. It is not unusual for the wholesale people to make bids to County Boards at a lower price than they will sell to jobbers.

Of course, a contractor who is engaged in road building and is building a road, or doing other construction work for the county, may order his material from a member of

the Board or any other person, provided no unfair advantage is taken to secure such business.

I am sure from the wording of your letter you want to do just exactly what is right and you do not wish to place yourself in the position of being criticised about your official conduct, and while the Attorney General is not authorized to render such opinions in such matters, I am giving you the benefit of my views as a matter of courtesy and hope that they may be of some service to you.

Yours very truly,

RIVERS BUFORD,
Attorney General.

MOTOR VEHICLES—LEASED CARS FOR HIRE.

Tallahassee, Fla., January 23, 1922.

*Mr. Stanton Walker,
Atlantic National Bank Bldg.,
Jacksonville, Fla.*

Dear Sir:

I am unable to agree with your conclusion that automobiles kept by a person, firm or corporation to be rented to individuals for the private use of such individuals during the time such automobile is in the custody of such individuals is not a motor driven vehicle for hire.

It is my opinion that the only manner in which such vehicle could be operated legally under a private license tag would be, for each individual, who hires such vehicle, to procure a private license tag for the same or else for the owner of the vehicle to register the vehicle in his own name and procure a transfer of the license to each individual who may lease the car, and also procure a transfer

from such individual back to the owner at the termination of the lease, which of course, would be entirely impracticable.

Yours very truly,
RIVERS BUFORD,
Attorney General.

TAX ASSESSOR—COMPENSATION FROM COUNTY
FUNDS AND NOT FROM SCHOOL FUNDS.

Tallahassee, Fla., January 27, 1922.

*Hon. Jas. S. Rickards,
Supt. Public Instruction,
Fort Lauderdale, Fla.*

Dear Sir:

Replying to your letter of January 25th, beg to say:

It is my opinion that the Board of Public Instruction is without authority of law to pay the County Tax Assessor any sum whatever. The Assessor's commissions are paid by the Comptroller for the State's proportion of the tax—general and special—and by the Board of County Commissioners for the county's proportion of the tax—general and special. And such commissions to be paid by the County Commissioners should be from the General Revenue Fund. The law does not authorize the expenditure of the School fund for anything except for school purposes.

Yours very truly,
RIVERS BUFORD,
Attorney General.

HOTEL COMMISSIONER—AUTHORITY TO CLOSE
HOTELS.

Tallahassee, Fla., January 27, 1922.

*Hon. Jerry W. Carter,
State Hotel Commissioner,
Tallahassee, Fla.*

Dear Mr. Carter:

Complying with your request of yesterday, I hand you herewith a form to be used in revoking licenses of hotels, rooming houses and restaurants.

I find no authority in the statutes by which you may assume to close up, except upon order of court, any hotel, rooming house or restaurant; neither are you authorized to close any room in any hotel or rooming house because of the failure of the proprietor to comply with the law.

Section 2150, Revised General Statutes, prescribes the procedure to be used to enforce compliance with the law, and you may also, of course, resort to criminal prosecution to punish those who have violated the law.

Yours very truly,
RIVERS BUFORD,
Attorney General.

COUNTY JUDGE—CLERKS MAY PERFORM
CLERICAL DUTIES.

Tallahassee, February 4, 1922.

*Hon. D. V. Rouse,
County Judge, Highlands Co.,
Sebring, Fla.*

Dear Judge:

Replying to your letter of the 2nd instant, I beg to say:

It is my opinion that a Clerk to the County Judge may perform non-judicial acts the same as the judge. He may administer oaths to affidavits may issue the ordinary warrants and all processes that do not require judicial determination. Because of the necessity for judicial determination, he cannot issue search warrants under the provisions of Chapter 8471. You will observe that Section 2 of this Act provides that the County Judge or Justices of the Peace is not authorized to issue a warrant upon an affidavit provided for in that Chapter, unless he deems the facts stated in the affidavit sufficient to show probable cause. Therefore, he is required to exercise his judicial discretion, which cannot be done by the Clerk.

The statutes do not provide any fee for County Judge for sitting in the trial of ordinary cases, and there are some special instances in which fees are provided.

I assume that you have received a copy of "A Compilation of Statutes" governing fees to be paid to County Officers, which were sent out by me to the several Clerks of the Circuit Court to be distributed to the County Officers in each county. If you have not received your copy, call on the Clerk and get same.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SHERIFFS—FEES—CONSTRUCTIVE MILEAGE.

Tallahassee, Fla., February 6, 1922.

*Hon. W. C. Spencer,
Sheriff Hillsborough Co.,
Tampa, Fla.*

Dear Will:

Replying to your letter of the 3rd instant, I beg to say:

It is my opinion that under the statute, a Sheriff may only charge mileage when summoning a jury for the mileage actually traveled, and that it is the duty of the Sheriff to make the mileage as short as it is practically possible. The law does not require that you shall summons all jurors on one trip, but fairness to the county does require that the executive officer should make as many services as is practically possible on one trip. For instance, if you send a man to Antioch and the road from Antioch to Plant City, a distance of 7 miles there, is practicable for traveling, he should continue to Plant City. Then should the road be practicable from Plant City to Keysville, 11 miles, he should continue to Keysville, and then if her has a practicable route from Keysville to Brandon, 28 miles, he should proceed to Brandon and from thence to Tampa, 12 miles, making a total distance of 74 miles.

Now should your deputy make this trip as above suggested, and upon the completion of the trip render a bill as follows: Tampa to Antioch and return, 32 miles; Tampa to Plant City and return, 44 miles; Tampa to Keysville and return, 56 miles; Tampa to Brandon and return, 24 miles; making a total of 156 miles, you would have included therein 82 constructive miles, which were not traveled.

With kindest personal regards, I am,

Yours very truly,

RIVERS BUFORD,

Attorney General.

CONSTABLE — JURISDICTION; SEARCHES — IN-
TOXICATING LIQUORS.

Tallahassee, Fla., February 25, 1922.

*Hon. G. W. Johnson,
Sheriff, Washington County,
Vernon, Fla.*

Dear Sheriff:

Replying to your letter of the 24th instant, I beg to say:

It is my opinion that a constable has no official status outside of the territorial boundaries of the County in which he is an officer, and, therefore, he is not authorized to perform any official functions outside of such county.

The courts have positively decided and held that a Sheriff or other officer is not authorized to search any person, house or vehicle for intoxicating liquor without having at the time a search warrant authorizing such search.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SHERIFFS—FEES—PER DIEM—TWO OR MORE
CASES IN ONE DAY.

Tallahassee, Fla., February, 28, 1922.

*Hon. W. B. Douglas,
Lake City, Fla.,*

Dear Sheriff:

Replying to your letter of the 27th instant, beg to say:

I do not think that the Sheriff or a Constable is authorized to collect two or more per diem fees for attendance upon a court in one day.

It is my opinion that if more than one case is disposed of by the court in any one day, that the per diem fee for the Sheriff should be prorated between the cases disposed of and a just proportion of such cost assembled in each case.

Yours very truly,

RIVERS BUFORD,

Attorney General.

ELECTION—REGISTRATION—AGE.

Tallahassee, Fla., March 1, 1922.

*Hon. F. C. Coles,
Supervisor of Registration,
Tallahassee, Fla.*

My dear Mr. Coles:

It is my construction of the law that a person offering to register is required to swear to certain facts; among others is, "age in years," and I know of no construction in law by which the statement, "21 plus" or "21 or more" could be construed to be a statement of the age of the person, and I do not think that such statement is sufficient under the law to entitle such persons to register.

The requirement of the statement of age is for two purposes: The first is to show that the proposed elector is more than 21 years of age and, therefore, entitled to the franchise and also that there may be a record which will be undisputable evidence as to the time at which the elector will become 55 years of age and no longer subject to the payment of the poll tax, and, second, for the pur-

pose of identification, either at the polls or in any other legal matter or controversy in which the age of the elector may become a material matter. In the larger Cities we would find a great many persons having the identical name, and in such cases you can readily see that the affidavit as to the age and the proper statement of the age of the registrant is very necessary to avoid fraud and deception.

Of course, if a person really does not know his or her age, nor has any reasonable means by which he or she can ascertain the same, the best that can be done in such case is to have a statement "to the best of his or her knowledge or belief," etc. But most people who are intelligent enough to vote will know their true ages and if they possess such intelligence do not object to stating the same as it is.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SCHOOLS—COMPULSORY ATTENDANCE.

Tallahassee, Fla., March 4, 1922.

*Mr. T. J. Knight,
Attendance Officer,
Green Cove Springs, Fla.*

Dear Sir:

Replying to your letter of February 24th, beg to say:

It is my opinion that a person violating Section 7 of Chapter 7808, Laws of Florida, is guilty of a separate offense and subject to separate prosecution for each day upon which the violation of the Section is committed.

This Section has never been construed by our Supreme Court, and, therefore, it becomes my duty to construe the Section in the literal meaning of the words used therein.

Yours very truly,

RIVERS BUFORD,
Attorney General.

SHERIFFS—PER DIEM.

Tallahassee, Fla., March 10, 1922.

*Hon. Henry R. Morse,
County Judge,
Titusville, Fla.*

Dear Judge:

Replying to your letter of the 7th instant, beg to say:

My ruling has been that a Sheriff, Deputy Sheriff or Constable is only entitled to one per diem for each day's attendance upon a court and that this per diem should be pro rated between cases disposed of on such day regardless of what the result of the case may be.

Yours very truly,

RIVERS BUFORD,
Attorney General.

ELECTIONS—CHALLENGES.

Tallahassee, Fla., March, 10, 1922.

*Hon. F. M. Ironmonger,
Supervisor of Registration,
Jacksonville, Fla.*

Dear Sir:

I am in receipt of your letter of March 7th. In reply thereto I beg to say:

In my opinion, it is the duty of the proper officials to challenge any person who offers to vote in any election when such person does not appear to be registered according to law; that is, compliance with the statutes, or any person who does not appear qualified otherwise to vote, and that it is the duty of such officials to pursue the course which the statutes prescribe in such cases and let the courts decide whether or not the elector offering to vote is entitled to vote, or has violated the law by so doing.

Yours very truly,
RIVERS BUFORD,
Attorney General.

ELECTION—ELECTORS—QUALIFICATIONS.

Tallahassee, Fla., March 17, 1922.

*Hon. J. Turner Butler,
Jacksonville, Fla.*

Dear Sir:

Replying to your letter of the 15th instant I beg to say:
It is my opinion that Section 708, Revised General

Statutes, as amended by Chapter 8585, Acts of 1921, is based upon the authority of Section 5 of Article IX of the Constitution, while Section 215, Revised General Statutes, as amended by Chapter 8583, Acts of 1921, is based upon Section 8 of Article VI of the Constitution, and, therefore, Section 215 as amended by Chapter 8583, Acts of 1921, is not dependent upon Section 708 as amended by Chapter 8585, Laws of Florida, but that the provisions of Section 215 as amended would be enforceable without any law existing authorizing the levy of the capitation tax. Therefore, a person may be required to pay such tax to become qualified to vote, whether such tax was levied or not, and the only exception which exists would be those exceptions which are provided by the statutes itself. I, therefore, conclude that the question as to whether or not the levy of the capitation tax was authorized January 1, 1921, is immaterial.

In this connection, I enclose herewith a copy of a letter which I wrote some days ago to the Penscola Journal.

Yours very truly,

RIVERS BUFORD,

Attorney General.

BOARD OF CONTROL—BUILDING CONTRACTS
APPROVED.

Tallahassee, Fla., March 24, 1922.

*Hon. John T. Diamon, Secy'y.,
Board of Control,
Tallahassee, Fla.*

Dear Sir:

I have examined the contracts and bond executed by Southern Construction Company and United States Fidel-

ity & Guaranty Company with the Board of Control of the State of Florida for the erection and completion of Laboratory Building on the grounds and for the Agricultural Experiment Station of the University of Florida, at Quincy, Fla., and find the same in proper form and properly executed.

I herewith return contracts and bond to you with my approval.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SHERIFFS—DISQUALIFICATION BY INTEREST

Tallahassee, Fla., April 7, 1922.

*Hon. C. L. Wilson,
Judge 14th Judicial Circuit,
Marianna, Fla.*

Dear Judge:

Replying to your letter of the 5th instant, I beg to say:

It is my opinion that a Sheriff is not disqualified to act as the executive officer of the Circuit Court because of the fact that a complaint, charging him with a criminal offense, has been made before a committing magistrate within the jurisdiction of the court. Of course, should a Sheriff be indicted and the indictment should be filed and issue joined thereon in the Circuit Court, and thereupon such cause should come on for trial, the Sheriff would be a party at interest in such cause and would be disqualified to act as the executive officer of the court in matters incident to such pending cause, but would not be disqualified in any other matter pending in the said court.

If any other rule should be applied designing persons could easily disqualify a Sheriff and prevent his acting as executive officer of the courts and thereby embarrass court machinery at will. The rule would apply, (if it could be said to apply at all) to the most frivolous and unfounded charge as to the most serious and well founded charge, and, therefore, it appears that the Legislature has exercised wisdom in not enacting a law which would preclude the Sheriff from performing the duties of executive officer of the court merely upon the ground that he stands charged with the violation of a penal statute.

Yours very truly,

RIVERS BUFORD,
Attorney General.

STATE LIVE STOCK SANITARY BOARD—QUAR-
ANTINE—PUBLICATION.

Tallahassee, Fla., April 12, 1922.

*Dr. J. V. Knapp,
State Veterinarian,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of April 11th asking my opinion as to the amount of and extent of publicity required to be given Quarantine Regulations under the provisions of Section 2105, Revised General Statutes, I beg to say:

It is my opinion that the Regulations must be published at least one time in a newspaper in this State, which newspaper shall have been selected and designated by the State Live Stock Sanitary Board, and that it is also necessary for the State Live Stock Sanitary Board to direct that the

notices of such Quarantine Regulation be posted at the door of the Court Houses in the counties affected, and that such Board cause copies of the notices also to be posted along the highways and other conspicuous places.

I deem it necessary for a meeting of the Board to be called as soon as possible for the purpose of designating a newspaper or newspapers in which Quarantine Rule No. 1 shall be published and to direct that copies thereof be posted as herein suggested. A meeting is necessary because the minutes of the Board ought to show affirmatively that this action of the Board has been taken.

Yours very truly,

RIVERS BUFORD,
Attorney General.

TAXATION—POLLS—OVER AGE.

Tallahassee, Fla., April 24, 1922.

*Hon. F. M. Ironmonger,
Supervisor of Registration,
Jacksonville, Fla.*

Dear Sir:

Replying to your letter of the 22nd instant, beg to say:

It is my opinion that a person who arrived at the age of 55 years during the year, 1920, and arrived at such age after the first day of January of such year, must pay the poll tax for the year 1920 to be qualified to vote in an election to be held in 1922. See Section 215, Revised General Statutes, as amended by Chapter 8583, Acts of 1921, and particularly observe Paragraph Six.

You will note that it is provided in this Paragraph that no person shall be prevented from voting on account of

not having so paid a poll tax for any year which shall not have been lawfully assessable against him or her by reason of him or her not having been of age, or having been over 55 years of age. Taxes are all assessable as of the first day of January and poll tax is assessable against all persons residents of this State, who are over 21 years of age and under 55 years of age on the first day of January of the year for which the tax is to be assessed.

Yours very truly,

RIVERS BUFORD,

Attorney General.

ELECTIONS—PRIMARIES—REGISTRATION.

Tallahassee, Fla., April 28, 1922.

*Hon. L. L. Pararo,
Clerk Circuit Court,
Crawfordville, Fla.*

Dear Sir:

Persons who registered in the General Election Book of 1920 must register in the Primary Registration Book to be qualified to vote in the Primary Election.

Section 308, Revised General Statutes, provides that those who are duly registered in the Primary Election Book shall be qualified, as far as registration is concerned, to vote in a General Election but the statute does provide for the General Registration list to be used in the Primary Election.

Yours very truly,

RIVERS BUFORD,

Attorney General.

ELECTIONS—CANDIDATES—ASSESSMENTS.

Tallahassee, Fla., May 1, 1922.

Mr. Jas. J. Hunter,
Supervisor of Registration,
West Palm Beach, Fla.

Dear Sir:

Replying to your letter of the 29th instant, beg to say that if an assessment has been made by the County Executive Committee, it is my opinion that such assessment must be paid by candidates to qualify and have their names placed upon the ticket whether a certified copy of such resolution was delivered to the Clerk of the Circuit Court as required by Section 325, Revised General Statutes, or not.

Of course, if the Executive Committee did not pass or adopt a resolution setting forth what assessment (if any) will be required of candidates, then no assessment has been made and no assessment should be paid.

Yours very truly,

RIVERS BUFORD,
Attorney General.

SHERIFF—MILEAGE—OUTSIDE STATE.

Tallahassee, Fla., May 2, 1922.

*Hon. W. C. Spencer,
Sheriff Hillsboro County,
Tampa, Fla.*

Dear sir::

I am in receipt of your letter of April 28th.

My opinion to you as expressed in my letter of April 25th was based upon Section 2893, Revised General Statutes, and I had not observed the amendment as contained in Section 2 of Chapter 7886, Acts of 1919.

Having considered Section 2 of Chapter 7886, Acts of 1919, it is my opinion that the Sheriff is entitled to mileage for himself and prisoner as stated therein and to be reimbursed for such money as he is required to spend as necessary expense for and on account of returning the prisoner to the State of Florida. This would include in my opinion the money which he pays to officers of other States on account of the arrest, maintenance, etc., of the prisoner and also the money paid by him for transporting and caring for the prisoner while returning, but would not include the money necessarily expended in payment for transportation and maintenance of the sheriff or officer going for and returning with the prisoner. In other words, it is my opinion that the expense allowed would include the money expended for and on account of the prisoner and not money expended for and on account of the Sheriff or officer executing the warrant of extradition.

Yours very truly,
RIVERS BUFORD,
Attorney General.

ELECTIONS—POLLS—TIME FOR PAYMENT.

Tallahassee, Fla., May 3, 1922.

*Hon. W. H. Mapoles,
Crestview, Fla.*

Dear Senator:

Replying to your letter of May 2nd, beg to say that Section 314, Revised General Statutes, fixes the time for the payment of poll tax before a person is qualified to vote in Primary Elections. The provision of this Section is, that no person shall be permitted to vote at a Primary Election who shall have failed to pay on or before the second Saturday in the month preceding the day of such election his poll taxes for two years next preceding the year in which such election shall be held. The month next preceding the date of the Primary Election to be held this year (June 6th) would begin to run on the corresponding date in the preceding month, and, therefore, would begin to run on May 6th. As May 6th is Saturday, it is the first Saturday in the month next preceding the date of the election and the second Saturday in that month will fall on May 13th. Therefore, the time expires for the payment of poll tax as a qualification to vote in the June Primary on Saturday, the 13th day of May.

Chapter 8583, Acts of 1921, amended Section 215, Revised General Statutes, which referred to General Elections, but under the provision of Paragraph 6 of Section 1 of said Chapter, which provides that the poll tax shall be paid at least on or before the fourth Saturday preceding the day of such election, would if applied, result in arriving at the same date, because the first Saturday before the election will be June 3rd; the second Saturday before the election, May 27th; the third Saturday before the election would be May 20th and the fourth Saturday

before the election would be May 13th. So there is really no difference in the result arrived at whether you construe one Section or the other.

Yours very truly,
RIVERS BUFORD,
Attorney General.

ELECTIONS—PRIMARY — PARTY AFFILIATIONS.

Tallahassee, Fla., May 10, 1922.

*Hon. W. H. Marshall,
Clerk Circuit Court,
Panama City, Fla.*

Dear Sir:

Replying to your letter of May 8th, beg to say:

In my opinion the designation as to party affiliation shown by the registration book governs as to whether or not a person is entitled to vote in a party Primary. A person is only entitled to vote in a Primary held under the auspices of the party to which he has claimed affiliation when registering. You will observe by reading the statute that a person may change his affiliation by notice to the Supervisor.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SHELL FISH — LICENSES — WHOLESALE
DEALERS.

Tallahassee, Fla., May 11, 1922.

*Hon. T. R. Hodges,
Shell Fish Commissioner,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of May 8th, I beg to say:

While Section 1259, Revised General Statutes, is none too clear, I think when you consider it in connection with Section 807, Revised General Statutes, that the conclusion must be that only one license tax is required to be paid by any person, persons, firm or corporation to engage in the business of a wholesale fish dealer in the State of Florida, and, therefore, any person, persons, firm or corporation, who shall have paid the \$10.00 license fee required, is thereby authorized to engage in the business of wholesale fish dealer and that such person having procured such license is entitled to engage in the business of a wholesale fish dealer in any place or places in the State of Florida where he may desire to establish such operations.

Yours very truly,

RIVERS BUFORD,

NURSES—CERTIFICATES—RENEWAL.

Tallahassee, Fla., May 17, 1922.

*Mrs. Louisa B. Benham, R. N.,
Secy. & Treas.,
State Board of Examiners of Nurses,
Hawthorne, Fla.*

Dear Madam:

Replying to your letter of May 15th, beg to say:

It is my opinion that if a nurse who becomes registered in the State of Florida and has procured a certificate and has held the same for one year, files her application with the fee of \$1.00 for the renewal of her certificate at any time within the year succeeding the expiration of her former certificate, she is entitled to a renewal. Of course, she would not be entitled to practice her profession in this State after the expiration of the period covered by one certificate before procuring another certificate, and in any event, the period of time covered by the second or subsequent certificate should appear in the face of the certificate "to be only for one year from the date of the expiration of the former certificate."

I herewith return to you the correspondence enclosed in your letter.

Yours very truly,
RIVERS BUFORD,
Attorney General.

JUSTICE OF PEACE — CONSTABLES — APPOINT-
MENT FOR SPECIAL SERVICE.

Tallahassee, Fla., May 18, 1922.

*Hon. J. B. Kline,
Justice of the Peace,
Clermont, Fla.*

Dear Sir:

Replying to your letter of May 16th, beg to say:

A justice of the Peace only has authority to appoint a Constable to serve papers which have been issued from his court, and such appointment must appear upon the papers which he has issued. He only has authority to appoint a special Constable for that purpose when a regular Constable, Sheriff or Deputy Sheriff is not available. Therefore, as Constable, I do not think Mr. Lee would be authorized to make the affidavit contemplated under Chapter 8471, Acts of 1921, but he is authorized to make the affidavit as a police officer, he being Marshal of a municipality, and if a search warrant is issued, he could then be appointed under proper conditions to serve the warrant.

You understand, of course, that your court has no jurisdiction to try any person charged with violating the Prohibition Law, except that a Justice of the Peace may hold a preliminary hearing in cases where a person is charged with a second offense. First offenses are in the exclusive jurisdiction of the County Judge's Court, unless the county has a County Court, or Criminal Court of Record.

Yours very truly,

RIVERS BUFORD,

Attorney General.

ELECTIONS—POLLS—TIME OF PAYMENT.

Tallahassee, Fla., May 18, 1922.

*Hon. J. A. Sewell,
Supervisor of Registration,
Brooksville, Fla.*

Dear Sir:

Section 314, Revised General Statutes, was not amended by the Acts of 1921, and, therefore, remains in force. If it had been amended as was Section 215, it would not make any change in the date upon which time for payment of poll tax expires. The amendment to Section 215 provides that the time for payment of poll tax expires on the fourth Saturday before the date of the election (however, this Section does not apply to Primaries) and if this Section applied to a Primary Election, by counting back four Saturdays before the date of the election you would arrive at May 13th.

Under the decision of the Supreme Court in the case of Slay vs. White, it was held that the month referred to in the statute was that time elapsing between the day of the election and the corresponding days in the preceding month. In computing such time, you must count from the beginning of one date to the beginning of another. Therefore, counting from the beginning of June 6th to the beginning of May 6th, we find that Saturday, May 6th, is the first day of the month preceding the date of the election and it being Saturday is the first Saturday in that month and the succeeding Saturday, May 13th, is the second Saturday in that month, and on this second Saturday, May 13th, the time for the payment of poll taxes expired.

If it happened that the election could fall on the 1st day of June, then any one would immediately see that the

first day of the preceding month would begin to run on the 1st day of May. And so it is regardless of what day the election falls on, the preceding month begins to run with the corresponding date in the preceding month.

Yours Very Truly,

RIVERS BUFORD,

Attorney General.

SHELL FISH—LICENSES—FISHING OUTSIDE
STATE WATERS.

Tallahassee, Fla., June 5, 1922.

*Hon. T. R. Hodges,
Shell Fish Commissioner,
Tallahassee, Fla.*

Dear Sir:

On November 19th, I advised you it was my opinion that the tax provided under Chapter 6877, Acts of 1915, as carried forward in the Revised General Statutes, could be collected upon boats engaged in the fishing business in the State of Florida whether the fish taken by such boats were caught within the waters of the State or not.

When I find I am wrong about a proposition I can admit my error as freely as anybody, and as I have never claimed to be entirely infallible it is not particularly painful for me to do so.

I find upon investigation of authorities, cited by Mr. Beall on hearing before me on last Saturday, that my opinion to you on November 19th was erroneous. I find upon close study of the case of *Ex Parte Powell*, Supreme court of Florida, Nov. 18, 1915, reported in 70th Southern on page 392, that the court in construing this statute

held "such of the provisions of Section 14, Chapter 6877, as require licenses to be taken out for the use of boats in fishing in the salt waters of the State, and making the license tax to depend upon the size of the boat, do not, in effect, constitute a duty of tonnage in violation of the Federal Constitution. The tax is not imposed upon vessels or boats engaged in commerce to or from a port, but upon boats USED IN FISHING IN THE WATERS OF THE STATE." You will observe from this construction, that the Supreme Court of Florida has in this case held that the tax is only valid upon the theory that it is only levied upon vessels or boats used in fishing in the waters of the State of Florida. You will also observe from the decision of the above cited case and the authorities therein cited, that if the court had construed the Act otherwise, it would have necessarily held it to be invalid as being in violation of the State and Federal Constitutions.

Therefore, I must advise you that the tax cannot be levied on boats which are used in taking fish from the waters or ports beyond the limits of the State of Florida and transporting them into the State of Florida for sale or shipment.

In running down the authorities upon this subject, I also find that you will not be authorized to interfere with shipments of crayfish, or other sea foods which come from beyond the limits of the State of Florida into the State of Florida, or to be consumed within the State of Florida, or to pass in shipment again beyond the limits of the State of Florida. You will find the leading case on this point reported in McDonald & Johnson, et al., vs. Southern Express Co., 134 Federal, page 282, and I respectfully suggest a careful reading of this decision by you as it contains much which you will find of interest.

Yours very truly,

RIVERS BUFORD.

Attorney General.

SEARCHES—SUNDAYS.

Tallahassee, Fla., June 13, 1922.

*Hon. Henry C. Mitchell,
Sheriff Santa Rosa County,
Milton, Fla.*

Dear Sir:

I am of the opinion that a search can be secured on Sunday and executed on Sunday just the same as it can any other day. The Supreme Court of this State has held that a verdict returned and judgment entered thereon on Sunday is valid, and in effect holds that those things may be legally performed on Sunday which are not specifically prohibited by statute.

Yours very truly,

RIVERS BUFORD,

Attorney General.

ELECTIONS—CANDIDATES—FEES PAID TO
COUNTY NOT RETURNABLE.

Tallahassee, Fla., June 20, 1922.

*Hon. C. F. Saunders,
Clerk Circuit Court,
Sebring, Fla.*

Dear Sir:

Replying to your letter of June 16th, beg to say:

It is my opinion that filing fees paid by candidates should go into the General County Fund and that when the

fee is paid the candidate has no further interest in it. In one election the fees collected may exceed the amount of the cost of the election, but in another the cost of the election may exceed the amount of the fees paid, and in either case, the county must pay the bill.

Yours very truly,
RIVERS BUFORD,
Attorney General.

COUNTY COMMISSIONERS—FAIRS—CONTRIBUTIONS.

Tallahassee, Fla., June 22, 1922.

*Hon. J. Turner Butler,
Jacksonville, Fla.*

Dear Sir:

Replying to your letter of June 21st with reference to the authority of the Board of County Commissioners of Duval County to contribute certain work for the benefit of the State Fair Association, I beg to say:

It is my opinion that the provisions of Section 4527, Revised General Statutes, constitute ample authority for the Board of County Commissioners to donate the work and use of property necessary to accomplish the work which the Board of County Commissioners desires to contribute to the benefit of the State Fair Association by way of filling in certain depressions and bringing to a firm and level grade certain parts of the property occupied by the State Fair Association.

Yours very truly,
RIVERS BUFORD,
Attorney General.

HOTEL COMMISSION—ROOMING HOUSES
DEFINED.

Tallahassee, Fla., July 10, 1922.

*Hon. Jerry W. Carter,
Hotel Commissioner,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of July 8th in which you ask my official opinion as to whether or not a building or other structure operated under the name of an apartment house which is "kept, used, maintained, advertised as or held out to the public to be a place where sleeping accommodations are furnished for pay to transient or permanent guests in which five or more rooms are used for the accommodation of such guests which does not maintain a dining room or cafe in the same building or in buildings connected therewith" would be deemed a rooming house and come under the jurisdiction and supervision of the Hotel Commissioner under the statutes in such case made and provided, I beg to say:

Section 2124 clearly defines what are held to be hotels and also what shall be held to be rooming houses, and a house used in the manner described in your letter comes clearly within the statutory definition of a rooming house and is clearly under the supervision of the Hotel Commissioner.

If you will examine your files you will find that Honorable T. F. West, who is now on the Supreme Bench, when he was Attorney General advised your predecessor, Hon. A. L. Messer, as to the construction of this identical statute, and the above opinion concurs with the opinion which he rendered the Hotel Commission at that time.

Yours very truly,

RIVERS BUFORD,
Attorney General

PRISONERS—FINES AND COSTS—SERVICE
PART TIME.

Tallahassee, Fla., July 12, 1922.

*Hon. J. A. Rowe,
Sheriff Baker County,
Macclenny, Fla.*

Dear Sir:

Replying to your letter of July 10th beg to say that the matter therein mentioned is fully and clearly covered in Section 6223, Revised General Statutes of Florida. Under the provisions of this section you will observe that the person convicted and sentenced to pay a fine and cost, or to serve a term in the County Jail in default of such fine and cost and who is unable to pay the fine and cost when beginning to serve but afterwards is able to pay the fine and cost, is entitled to credit on the fine and cost for the proportion of the time served. In other words, if a man is sentenced to pay \$300.00 and costs and in default thereof to serve 90 days in jail and is unable at first to pay the fine and cost, he may serve 30 days (one-third of the time) and for such service get credit for one-third of the amount of the fine and cost and by paying the other two-thirds be entitled to discharge.

Yours very truly,

RIVERS BUFORD,
Attorney General.

SHERIFF — FEES — MILEAGE BEYOND STATE;
SEARCHES—DAY OR NIGHT; PRISONERS—
WARRANTS NECESSARY FOR COMMITMENT TO
JAIL.

Tallahassee, Fla., July 12, 1922.

*Hon. W. B. Douglas,
Sheriff Columbia County,
Lake City, Fla.*

Dear Sir:

Replying to your request that I advise you in regard to three matters coming within the purview of the duties of the office of Sheriff, I beg to say:

1st. It is my opinion that a search warrant procured under the statute for the purpose of searching for contraband liquor or distilling apparatus may be either in the night-time or the day-time.

2nd. When a Sheriff of a county of less than 40,000 population is required to cross beyond the limits of the State of Florida to return a prisoner to the State of Florida, he is entitled to 5c a mile for each mile traveled both ways beyond the limits of the State and is entitled to 5c a mile for the distance which the prisoner travels, and is entitled to receive the actual expenses paid out for an on account of returning the prisoner to the State. This includes the expenses paid to other officers for apprehending and holding the prisoner, together with the prisoner's transportation and food, but does not include money which the Sheriff may expend for his own transportation and sustenance.

3rd. The Sheriff is not authorized to commit any prisoner to jail or hold any prisoner in jail without having in his possession a warrant or an order of commitment issued from a court of competent jurisdiction. It is the duty of

the Sheriff when arresting a prisoner under a warrant, if possible, to immediately take such prisoner before the court from which such warrant issued, and thereupon such court should fix the amount of bail bond, if the case be bailable, and make an order committing the prisoner to jail in default of the giving of such bond until such time as the prisoner can be given a further hearing. The usual custom is that the court informally fixes a bond and without any further formality the bond is either given or the prisoner placed in jail. But this is not technically legal and proper.

Yours very truly,

RIVERS BUFORD,

Attorney General.

COUNTY COMMISSIONERS—VACANCY—RE-
MOVAL FROM DISTRICT.

Tallahassee, Fla., July 13, 1922.

*Hon. John H. Carter,
Atty. Board of County Comrs.,
Marianna, Fla.*

Dear Sir:

Replying to your letter of the 12th instant, beg to say:

It is my opinion, under the state of facts set forth in your letter, that office of County Commissioner of District No. 5 of Jackson County became vacant upon the Commissioner of that District removing himself and family from the District and establishing his actual and legal residence and voting precinct in another District. This opinion is based upon the language used in Section 5 of Article VIII of the Constitution in which among other things is pro-

vided, "And thereafter there shall be IN each of such Districts a County Commissioner."

In view of the above stated constitutional provision, it is my opinion it will be best for Mr. Justice to tender his resignation before the Board of County Commissioners of Jackson County sits as a Board of Tax Equalizers.

Yours very truly,

RIVERS BUFORD,

Attorney General.

ELECTION—REGISTRATION—TIME PRIOR TO
ELECTION.

Tallahassee, Fla., July 19, 1922.

*Hon. F. M. Ironmonger,
Supervisor of Registration,
Jacksonville, Fla.*

Dear Sir:

Replying to your letter of the 18th instant, I beg to say that under the provision of Section 227, Revised General Statutes, the registration books shall be closed on the second Saturday of the month next preceding the date of the election. Election day falls on November 7th, 1922, and therefore, the month preceding the date of the election will begin to run on the corresponding date, which is October 7th and Saturday. October 7th would, therefore, be the 1st Saturday in the month preceding the date of the election; October 14th would be the 2nd Saturday in the month preceding the date of the election and the date on which the statute requires the registration books shall be closed.

Section 215, Revised General Statutes, was amended by

Chapter 8583, Acts of 1921, and Paragraph 6th of Section 215, as amended, provides "that no person shall be permitted to vote at an election who shall have failed to pay, at least on or before the 4th Saturday preceding the date of such election, his or her poll taxes for the two years next preceding the year in which such election shall be held: provided, etc." Therefore, the time for the payment of the poll taxes to qualify to vote in the November Election will expire on the 4th Saturday preceding the date of such election. The 1st Saturday preceding the date of the election will be Saturday, November 4th; the 2nd Saturday preceding the date of the election will be Saturday, October 28th; the 3rd Saturday preceding the date of the election will be Saturday, October 21st; and the 4th Saturday preceding the election will be October 14th, with which date the time expires for the payment of poll taxes.

Yours very truly,

RIVERS BUFORD,

Attorney General.

HOTEL COMMISSION — ROOMING HOUSE DEFINED.

Tallahassee, Fla., July 20, 1922.

*Hon. Jerry W. Carter,
Hotel Commissioner,
Tallahassee, Fla.,*

Dear Sir:

I am in receipt of your letter of July 20th asking my opinion as to whether or not "buildings or other structures operated under the name of a Villa or an apartment

house, road house or boarding house, which is kept, used, maintained, advertised as or held out to the public to be a place where sleeping accommodations are furnished to transient or permanent guests in which five or more rooms are furnished for the accommodation of such guests and having one or more dining rooms and kitchens where meals or lunches are prepared and served such transient or permanent guests, such sleeping accommodations, dining rooms or kitchens being conducted in the same buildings, or in buildings connected therewith "will come under the purview of the present Florida Inspection Law" and in reply thereto I beg to say:

It is my opinion that a building or other struction kept, used and operated in the manner set forth in your letter as above quoted comes within the definition of houses under the supervision of the Hotel Commissioner of Florida as set forth in Section 2124, Revised General Statutes of Florida, 1920.

Yours very truly,

RIVERS BUFORD,

Attorney General.

STATE PLANT BOARD—PROSECUTIONS—SERVICE OF PROSECUTING ATTORNEYS.

Tallahassee, Fla., September, 5, 1922.

Hon. J. H. Montgomery,
Assistant Plant Commissioner,
Gainesville, Fla.

Dear Sir:

Replying to your letter of August 29th, with which you

enclose copies of communications passed between Mr. T. M. O'Byrne, Nursery Inspector, and Mr. M. B. Smith, County Solicitor, of Titusville, and Hon. John A. DeCottes, State's Attorney, of Sanford, Fla., I beg to say:

The position taken by both Mr. Smith and Mr. DeCottes is correct. No duty involves upon Mr. Smith as Prosecuting Officer of the County Judge's Court of Brevard County to file affidavits in that court, charging offenses to have been committed upon information such as was furnished him. It would become his duty to prosecute the case if some person, representing the State Plant Board, who was cognizant of the facts, made affidavit in the County Judge's Court of Brevard County, charging an offense to have been committed within that jurisdiction just as it would be his duty to prosecute any other case properly originating in and within the jurisdiction of that court.

It would also be the duty of the State's Attorney of that Judicial Circuit, under the provisions of Section 2433, to represent the State Plant Board in any litigation pending within his Circuit when called upon do so by resolution of the State Plant Board, but it is not the duty of the State's Attorney to respond to the call of an employee of the State Plant Board. I am sure if the State Plant Board will cause proper affidavits to be made before a court of competent jurisdiction, charging an offense to have been committed, and will call on Mr. DeCottes to represent the State Plant Board in such prosecutions that Mr. DeCottes will gladly comply with such request. But there is a vast difference between a request coming from the State Plant Board and a request coming from some employee of the State Plant Board. The fact is that the request for an opinion from this office should have come from the State Plant Board, and the only reason which prompts me to feel that it is proper for me to advise you in the premises is, that the request is submitted through the Secretary of the Board, and it is my desire to assist

the Board in every way possible and not to stand too much on legal technicalities.

Yours very truly,
RIVERS BUFORD,
Attorney General.

CONSTABLE—FEES.

Tallahassee, Fla., September 6, 1922.

*Hon. Ed. W. Houstoun,
Constable 8th District,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of September 5th, beg to say:

It is my opinion that you, as Constable, are entitled to a commission of 5% on money collected by you as fines, fees, costs or other monies adjudged to the State, and that the Sheriff is only entitled to this commission of 5% when the principal is collected by him.

The law is quite clear that the Constable, for services rendered as such, is entitled to the same fees that the Sheriff is entitled to receive for like service, but I know of no theory upon which it may be successfully contended that the Sheriff is entitled to fees for services performed by a Constable.

Yours very truly,
RIVERS BUFORD,
Attorney General.

ELECTIONS—SCHOOL DISTRICTS—FREE
HOLDERS.

Tallahassee, Fla., September 21, 1922.

*Hon. George W. Barrow,
Supt. Public Instruction,
Crestview, Fla.*

Dear Sir:

In re: Elections in Special Tax School Districts.

Section 582, Revised General Statutes, provides that only duly qualified electors who are freeholders shall vote in Special Tax Sub-School District elections, and therefore, before a person may vote in such election, such person must be a qualified elector and must hold title to real estate within the territory embraced within the District in his or her own name. That the title to land is in the name of the husband will not qualify the wife to vote, because her dower interest is not a freehold estate. Neither would the fact that land within the territory is held in the name of the wife entitle her husband to vote in such election, because such title in the wife creates no freehold estate in the husband. Neither would a son or daughter be entitled to vote in such an election because of the fact that the title to lands within that area is vested in the father or mother.

Yours very truly,

RIVERS BUFORD,
Attorney General.

TAX CERTIFICATE—DEEDS.

Tallahassee, Fla., September 29, 1922.

*Hon. C. D. Shultz,
Clerk Circuit Court,
Inverness, Fla.*

Dear Sir:

Replying to your letter of the 22nd instant in regard to the issuing of tax deed based upon certain tax certificates, I beg to say:

It is my opinion that you can only be governed by the records of your office and if the tax certificates remain in the office of the Clerk of the Circuit Court unendorsed and you should now proceed to endorse the same and issue the deed, it would be necessary for you to account for the proceeds of the redemption or the purchase of the certificates.

Yours very truly,

RIVERS BUFORD,
Attorney General.

SUPERVISOR OF REGISTRATION—POSTING LIST
OF QUALIFIED ELECTORS.

Tallahassee, Fla., October 2, 1922.

*Hon. B. L. Blackburn,
Supervisor of Registration,
Tampa, Fla.*

Dear sir:

Replying to your letter of September 29th, beg to say:
In my opinion Section 231, Revised General Statutes of

Florida, may be complied with by posting a certified list of the registered and qualified electors of each election district at the voting place within such election district and by posting a certified list of all of the qualified electors at the Court House door.

It may be possible that the posting of the certified list at the Court House door would be a sufficient advertisement, but I deem it much safer to post a certified precinct list also in each precinct at the voting place.

Yours very truly,

RIVERS BUFORD,

Attorney General.

CONSTABLE—POWERS—CANNOT APPROVE BAIL
BOND.

Tallahassee, Fla., October 4, 1922.

*Mr. Edwin Houstoun,
Constable 8th District,
Tallahassee, Fla.*

Dear Sir:

Replying to your communication of the 3rd instant, I beg to say:

A constable is only possessed with such authority when acting as such as is specifically conferred by statute. The statute does not authorize a Constable under any condition to fix or approve a bail bond.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SEARCHES—HOTELS—ROOMS.

Tallahassee, Fla., October 6, 1922.

*Hon. Jno. U. Bird,
County Judge,
Clearwater, Fla.*

Dear Sir:

Replying to your letter of October 4th, I beg to say that because of the "youth" of the statute providing for the issuance and service of search warrants involving the unlawful possession of intoxicating liquor there appears a dearth of decisions in the reports of the higher courts. It is, therefore, necessary for the courts of original jurisdiction largely to blaze their own way, and my opinion is therefore an opinion based upon what I conceive to be logic and not upon reported decisions.

It is my opinion that a search warrant issued, authorizing the search of a particular hotel, would only apply to that part of the hotel at the time and in the possession of the manager or proprietor, and that it would not authorize the search of rooms in the hotel which happened to be at the time occupied by guests of the hotel as their private quarters. It is my opinion that a search of such rooms so occupied would only be authorized by a warrant designating the room and the occupant thereof.

It may appear that this rule would be a little hard on law enforcement, but on the other hand, a rule that would allow all rooms in a hotel occupied by guests to be searched upon a general warrant would be to authorize officers to enter the private apartments of ladies and gentlemen, who are entirely above suspicion and who are entitled to be protected in their constitutional rights, and I am therefore, sure that the courts would not countenance such a rule.

Yours very truly,
RIVERS BUFORD,
Attorney General.

JUSTICE OF PEACE—POWERS—JURISDICTION—
PROHIBITION STATUTES—SPECIAL CON-
STABLES.

Tallahassee, Fla., October 6, 1922.

*Hon. D. M. Feagle,
Lake City, Fla.*

Dear Sir:

Replying to your letter of October 5th, I beg to say:

A Justice of the Peace has no jurisdiction in regard to the prosecution of cases involving jurisdiction of the prohibition statutes. He has jurisdiction to issue search warrants as is provided by Chapter 8471, Acts of 1921.

A Justice of the Peace is not authorized to appoint a special Constable unless a regular Constable, Sheriff or a Deputy Sheriff is not available to perform the service.

Yours very truly,

RIVERS BUFORD,
Attorney General.

ELECTIONS—CANDIDATES BY PETITION.

Tallahassee, Fla., October 7, 1922.

*Hon. F. M. Ironmonger,
Supervisor of Registration,
Jacksonville, Fla.*

Dear Sir:

Replying to your letter of October 6th I beg to say:
Section 256, Revised General Statutes, among other

things provides that "the Board of County Commissioners * * * shall also cause to be printed upon said ballots the name of any qualified elector who has been requested to be a candidate for any office by written petition signed in case of a candidate for a State or Federal office by at least 500 electors * * qualified to vote in the election to fill said office when SUCH PETITION HAS BEEN FILED WITH THEM not more than 60 days, nor less than 20 days previous to the election."

You will observe that where the candidates' names go on the ticket by petition such petition is not required to be filed in the office of the Secretary of State, neither is any provision made for a certified copy of any petition to be used, but the statute requires that the petition, signed by at least 500 electors qualified to vote in the election, shall be filed with the Board of County Commissioners to authorize such Board to place the name of such candidates on the ballot.

If the Board of County Commissioners has received and filed a petition *signed* by 500 qualified electors requesting any qualified elector to become a candidate for a certain State office, then it is the duty of the Board of County Commissioners to place the name of the person so requested to become a candidate upon the ballot.

The question as to whether or not a proper petition has been filed before the Board of County Commissioners is a question to be determined by that Board and is not a matter in which the Supervisor of Registration is vested with any discretion to be exercised. The statutes providing the manner by which the candidate's name may be placed upon an official ballot are mandatory and must be strictly followed if an election pursuant thereto is to be held valid.

Yours very truly,

RIVERS BUFORD,

Attorney General.

COUNTY OFFICERS—REPORT OFFICE EXPENSES; TAX ASSESSOR—COMMISSIONS NOT ALLOWED ON ILLEGAL ASSESSMENTS.

Tallahassee, Fla., November 1, 1922.

*Hon. Chas. A. Clark, Chairman,
Board of County Commissioners,
Jacksonville, Fla.*

Dear Sir:

In reply to your letter of October 30th I shall answer each paragraph separately and in the order in which same is presented.

Your first question is as follows:

“Under Chapter 8497, Laws of Florida, Acts of 1921, County Officers are required to present to the Board of County Commissioners ‘a sworn statement showing in detail the expenses of such office, the fees and commissions collected and the gross and net income thereof.’ Will you please advise me whether or not in your opinion a statement from a County Officer merely showing the gross receipts and gross expenses without the items constituting either being detailed in the report, is a substantial compliance with this provision of law, and if not, then what in your opinion must the statement show to comply with the law?”

It is my opinion that a County Officer to comply with that part of Chapter 8497, Laws of Florida, Acts of 1921, as quoted by you, must file with the Board of County Commissioners at the times named in the statutes a statement under oath showing each and every item in detail which has been expended as an incident to the conduct of the office. The statement should show to whom, for what, at what time, and the amount paid as to each separate item. The statement should also show each item of fees and com-

missions collected, and this should show for what and from whom and the time when each item was collected. Unless such statements are rendered in such detail, it would be impossible to keep any check upon the accounts of the County Officers and therefore impossible to determine whether or not the law is being complied with. In *State ex rel., Buford, Attorney General, vs. Spencer*, reported in 81 Fla. 211, the Supreme Court of Florida holds as follows: "The fees collected by officers represent the charge which the State makes for services rendered by it through its officers, and constitutes a fund subject to the control of the State and to be applied as the Legislature directs." Therefore, it is clear that the State is within its rights when it provides a detailed accounting of and for such fees.

Your second question is as follows:

"Section 2 of the same chapter above referred to defines the net income as meaning the residue of the income from such office after deducting all reasonable expenditures for the salaries of clerks and assistants and necessary expenditures for the proper operations of the office. I wish your opinion as to what restrictions, if any,, govern the respective County Officers in the expenditure of money for the expenses of the office and particularly as to whether or not the Board of County Commissioners is authorized to decline and refuse to pay items of expense incurred by a County Official, which in the judgment of the Board of County Commissioners is unnecessary, unfair to the tax payer, exorbitant or wasteful, and whether such expense has been incurred by the official for clerical help or for equipment incident to the conduct of the office?"

Under the provisions of Section 2 of Chapter 8497, it is my opinion that each officer is authorized to deduct from his gross receipts all *reasonable* expenditures for the salaries of clerks and assistants and *necessary* expenditures for the proper operation of his office. It is my opinion that

the County Commissioners are without authority to restrict the expenditures made by the County Officer. But, the Board of County Commissioners is entitled to have a detailed and itemized statement of these expenditures, and if the Board of County Commissioners, upon examination thereof, is satisfied that the official does not in the conduct of his office comply with the purposes and intent of Chapter 8497, it is the duty of the Board of County Commissioners to send a copy of such report with its objection to the Governor of Florida. It is the duty of each County Officer to comply with the purposes and intent of Chapter 8497, and as defined by the Supreme Court in the case above cited one of the purposes of the Act is to create a fund to be used by the county for general purposes out of the surplus of fees collected. If a County Officer wantonly and by waste and unnecessary expenditure defeats or attempts to defeat this purpose of the Act, it is my opinion that he is guilty of misfeasance in office and his suspension by the Governor would be warranted. It is further my opinion that when a County Officer purchases equipment of any character necessary for the conduct of his office, he should thereafter fully account for such equipment, and should he trade it, or sell it, while occupying the office, he should account for the proceeds of such trade or sale in his report, and should he retain such equipment until his term of office expires, the equipment should go with the office and cannot be considered his private property but should be turned over to his successor in office.

Your third question is as follows:

"I also desire your opinion as to what should be the basis of settlement between the Board of County Commissioners and the Tax Assessor? To make my question clear in this regard will say that the tax rolls of Duval County for 1921 contains assessments against persons who have long since been dead, against business firms which have retired from business and other assessments of property which does not now exist

and has not existed for years past, and I want to know whether or not in your opinion Duval County must pay the Tax Assessor for making assessments of this character or should such erroneous assessments be deducted before final settlement is made with the Tax Assessor?"

Ordinarily it would be necessary for me to refer you to the Department of the State Comptroller for advice on this subject, as this matter comes under the jurisdiction of his office, but Mr. Amos, State Comptroller, has discussed this matter with me and understands that I am to give you the view which is entertained by him and myself in regard to the same. That view and opinion is: an assessment against a person long since dead and an assessment against business firms, which have retired from business, and assessments of property which do not exist and which have not existed for years past, constitute either an illegal assessment, under the provisions of Section 726, Revised General Statutes of Florida, if real property, or an error in assessment as contemplated by the provisions of Section 797, Revised General Statutes of Florida, regardless of what class of property may be involved, and that therefore the amount of such assessment should be excluded when calculating the commissions due to a Tax Assessor.

With kindest personal regards, I am,

Yours very truly,

RIVERS BUFORD,
Attorney General.

PROBATION OFFICERS — POWERS—COMPEN-
SATION.

Tallahassee, Fla., November 9, 1922.

*Hon. J. C. Lanier,
Probation Officer,
Jacksonville, Fla.*

Dear Sir:

The powers and duties of a Probation Officer are limited to those especially designated in the statutes, and as the statutes do not authorize a Probation Officer to serve process issuing from any court, such Officer has no authority to serve process issuing from the Juvenile Court. The statute provides that the Probation Officer shall be Clerk of the Juvenile Court.

It is my opinion that the salary provided to be paid the Probation Officer covers compensation for all services which he may render as such Officer.

Process from the Juvenile Court should be served by the Sheriff's office when such service is necessary.

With the kindest personal regards, I am

Yours very truly,

RIVERS BUFORD,

Attorney General.

SHERIFF — FEES — COMMITMENTS BY CON-
STABLE.

Tallahassee, Fla., November 13, 1922.

*Hon. J. R. Jones,
Sheriff Leon County,
Tallahassee, Fla.*

Dear Sir:

Replying to your request that I advise you as to your right as Sheriff in regard to prisoners arrested by a Constable and brought to the County Jail, I beg to say:

It is my opinion that it is the duty of the Sheriff to receive and safely keep in jail any prisoner who is offered at the jail by any Constable when such Constable has in his possession a warrant authorizing the arrest of such prisoner and when it appears that it is not practicable for the Constable to immediately take such prisoner before the court issuing the warrant. It is also the duty of the Sheriff to receive the prisoner and safely keep him when such prisoner is presented by a Constable holding a commitment from a court of competent jurisdiction directing the prisoner to be so held.

It is the duty of any officer arresting any person under a warrant to immediately take such prisoner before the court from which such warrant issued, and thereupon such court should fix the amount of bail bond, if the case be bailable, and make an order committing the prisoner to jail in default of giving such bond until such time as the prisoner can be given further hearing. It is the right of the prisoner to be taken immediately before the court for the purpose of giving bond. The court may fix the amount of bond at the time of the issuing of warrant or *capias*, and in such case, the Sheriff or the court from which the warrant issued may take and approve the bond.

The wording of the statute indicates that the Sheriff is only entitled to the fee for commitment when the prisoner has been arrested by him and to a fee for re-commitment when he is ordered by the court to re-commit the prisoner. Therefore, I do not think that the Sheriff is entitled to a fee for committing the prisoner who has been arrested by a Constable.

At one time there was a statute providing fees for a Turnkey or Jailer, and under this system the Jailer was paid a fee for each passage of a prisoner in and out of jail. This, however, does not any longer obtain. The statute now appears to contemplate that the fee for commitment shall be paid to the officer making the arrest.

Yours very truly,

RIVERS BUFORD,

Attorney General.

CHILDREN—DELINQUENT OR DEPENDENT—
COMMITMENT FOR CARE AND MAIN-
TENANCE.

Tallahassee, Fla., December 1, 1922.

*Hon. Marcus C. Fagg, State Supt.,
Childrens' Home Society of Florida,
Jacksonville, Fla.*

Dear Sir:

I am in receipt of your letter of November 28th.

In reply thereto I beg to say that it is my opinion that the provisions of Section 2341, Revised General Statutes of Florida, stand in full force and effect.

You will observe that this Section does not apply to delinquent children, although it does apply to children who

are defined as dependent children in Section 2321, Revised General Statutes of Florida, and it is my opinion that either the provisions of Section 2321 taken with Section 2323 and Section 2324 may be invoked as to a child to which the provisions of Section 2341 apply, or the provisions of Section 2341 may be invoked as to such child.

Yours very truly,

RIVERS BUFORD,

Attorney General.

INTOXICATING LIQUORS—PROOF—CHEMICAL
ANALYSIS.

Tallahassee, Fla., December 2, 1922.

*Mr. Milton Pledger,
County Prosecuting Attorney,
Kissimmee, Fla.*

Dear Sir:

Hon. G. T. Whitfield, Clerk of the Supreme Court, has transmitted to me your letter of November 28th.

The decision of the Supreme Court in the case of *Atz vs. The State* has not been published because of the fact that the Justice writing the opinion has not yet prepared head notes to be published with the decision. The decision has been misquoted and erroneously interpreted by press reports. There is nothing in the decision which indicates that it is the opinion of the court that the intoxicating quality of liquor may only be proven by chemical analysis. The court does intimate that by chemical analysis proper proof could be made. The opinion does not in any way abrogate Section 5480, Revised General Statutes of Florida, but it does hold that if the provisions

of this Section are invoked that it must be strictly complied with. One provision of the Section is that the possession of any quantity of what is "commonly called rum, or moonshine liquor * * * be deemed prima facie evidence of the violation of the statutes." This provision is not yet met and complied with by testimony of some witness that the liquor was *shine* or was *moonshine*, but was met and complied with by testimony that the liquor was "liquor commonly known as rum, or moonshine liquor," and of course, this provision would not apply to buck, beer, wine or many other intoxicating liquors, the intoxicating quality of which would have to be proved by some other method. It has always been necessary to prove that the liquor involved was of that character which is prohibited by law. This has always been a material fact necessary to be alleged and proved, and if it is alleged and proved by competent testimony, then the law in this regard has been complied with. The method of proof necessary would largely depend upon the circumstances surrounding each case.

Yours very truly,

RIVERS BUFORD.

Attorney General.

SHERIFF—FEES—COLLECTIONS FOR HIRE OF
CONVICTS.

Tallahassee, Fla., December 9, 1922.

*Hon. A. J. Lewis,
Sheriff, Jackson County,
Marianna, Fla.*

Dear Sir:

Replying to your letter of the 8th instant, I beg to say

that it is the ruling of this office that where the Board of County Commissioners require the Sheriff to collect and account for compensation received for the hire of county convicts, then the Sheriff is entitled to receive commission upon the monies so collected. This rule does not obtain if the County Commissioners do not require the Sheriff to make the collection but on the other hand make the collections direct through the Clerk of the Board. Therefore, under the statement of facts as outlined in your letter it is my opinion that you are entitled to the commission.

Yours very truly,

RIVERS BUFORD,

Attorney General.

COUNTY JUDGES—MARRYING FEE NOT
REQUIRED TO BE REPORTED.

Tallahassee, Fla., December 9, 1922.

*Hon. L. E. Futch,
County Judge,
Ocala, Fla.*

Dear Judge:

The statute does not provide a fee for performing a marriage ceremony. Any compensation which a person may receive for officiating at such ceremony is a matter to be agreed upon between the parties involved, and therefore, a fee received for the performance of a marriage ceremony by a County Judge does not constitute a part of the fees provided by law to be paid to such official and is not required to be reported as a part of his compensation.

Yours very truly,

RIVERS BUFORD,

Attorney General.

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